

Deposition Designations for:  
EARL D. LOVICK  
December 19, 1996

**Deposition Designation Key**

Arrowood = Arrowood Indem. Co.  
f/k/a Royal Indem. Co. (Light Green)

BNSF = BNSF Railway Co. (Pink)

Certain Plan Objectors "CPO" = Government Employees Insurance Co.; Republic Insurance Co. n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance Co.; Fireman's Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurtà; and Allianz SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal Belge SA (Orange)

CNA = Continental Cas. Co & Continental Ins. Co. (Red)

FFIC = Fireman Funds Ins. Co. (Green)  
FFIC SC = Fireman Funds Ins. Co. "Surety Claims" (Green)

GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.

Libby = Libby Claimants (Black)

OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)

PP = Plan Proponents (Blue)

Montana = State of Montana (Magenta)

Travelers = Travelers Cas. and Surety Cos. (Purple)

UCC & BLG = Unsecured Creditors' Committee & Bank Lenders Group (Lavender)

AFNE = Assume Fact Not in  
Evidence  
AO = Attorney Objection  
BE = Best Evidence  
Cum. = Cumulative  
Ctr = Counter Designation  
Ctr-Ctr = Counter-Counter  
ET = Expert Testimony  
F = Foundation  
408 = Violation of FRE 408  
H = Hearsay  
IH = Incomplete Hypothetical

L = Leading  
LA = Legal Argument  
LC = Legal Conclusion  
LPK = Lacks Personal Knowledge  
LO = Seeking Legal Opinion  
NT = Not Testimony  
Obj = Objection  
R = Relevance  
S = Speculative  
UP = Unfairly Prejudicial under Rule 403  
V = Vague

**CONDENSED TRANSCRIPT**

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**ERVIN E. HURLBERT, ET. AL.**

**VS.**

**W.R. GRACE & CO, ET. AL.**

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**VIDEO DEPOSITION**

**OF**

**EARL D. LOVICK**

**(Volume 1)**

**Taken December 19, 1996**

**Reported by Jolene Asa, RPR  
Hedman & Asa Reporting  
947 South Main  
P.O. Box 394  
Kalispell, Montana 59901  
(406)752-5751**

## EARL D. LOVICK (VOL. 1)

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## HURLBERT VS. W.R. GRACE

1 IN THE DISTRICT COURT OF THE NINETEENTH  
2 JUDICIAL DISTRICT FOR THE STATE OF MONTANA  
3 IN AND FOR THE COUNTY OF LINCOLN  
4 ERVIN E. HURLBERT, Cause No. DV-95-109  
5 Plaintiff, )  
6 LESTER LEWIS SKRAMSTAD and Cause No. DV-95-127  
7 NORITA IOWE SKRAMSTAD, )  
8 husband and wife, )  
9 Plaintiffs, )  
10 DONALD M. KARDING and LOUISE Cause No. DV-96-71  
11 S. KARDING, husband and wife, )  
12 Plaintiffs, )  
13 CARLENE J. (TONI) RILEY, Cause No. DV-96-111  
14 Plaintiff, )  
15 vs )  
16 M.R. GRACE & CO., a )  
17 Connecticut corporation, I-IV, )  
18 Defendants. )

## VIDEO DEPOSITION

OF

EARL D. LOVICK

21 Taken at the Offices of Hedman & Asa Reporting  
22 947 South Main  
23 Kalispell, Montana  
24 Thursday, December 19, 1996  
25 9:04 a.m.

Reported by Jolene Asa, RPR, and Notary Public  
for the State of Montana, Flathead County.

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## STIPULATIONS

6 It was stipulated by and between counsel  
7 for the respective parties that the deposition be  
8 taken by Jolene Asa, Registered Professional  
9 Reporter and Notary Public for the State of Montana,  
10 residing in Flathead County, Montana.

11 It was further stipulated and agreed by  
12 and between counsel for the respective parties that  
13 the Deposition be taken at the time and place set  
14 out on the caption and pursuant to the Montana Rules  
15 of Civil Procedure.

16 It was further stipulated and agreed by  
17 and between counsel for the respective parties and  
18 the witness that the reading and signing of the  
19 deposition would be expressly reserved.

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## APPEARANCES

## 6 Appearing on behalf of the Plaintiff:

7 Mr. Jon L. Heberling, Esq.  
8 McGarvey, Heberling, Sullivan & McGarvey, P.C.  
9 745 South Main  
10 Kalispell, MT 59901

## 10 Appearing on behalf of the Defendants:

11 Mr. Gary L. Graham, Esq.  
12 Garlington, Lohn & Robinson, PLLP  
13 P.O. Box 7909  
14 Missoula, MT 59807-7909

## 14 Appearing on behalf of the Earl D. Lovick:

15 Mr. Robert A. Murphy, Esq.  
16 Casner & Edwards, LLP  
17 One Federal Street  
18 Boston, MA 02110

## 18 Videographer:

19 Mr. Matthew Scotten  
20 Video Data Services of Montana  
21 P.O. Box 1206  
22 Whitefish, MT 59937

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1 THE REPORTER: This is the video  
2 deposition of Earl Lovick taken in the case of Ervin  
3 Hurlbert versus W.R. Grace, Cause No. DV-95-109, a  
4 Nineteenth Judicial District Court case in Lincoln  
5 County. This deposition is being taken today at the  
6 offices of Hedman & Asa Court Reporting in  
7 Kalispell, Montana. The date today is December  
8 19th, 1996, and the time is now 9:04 a.m.  
9 I'd ask counsel to please identify  
10 themselves for the record.

09:04:44 11 MR. HEBERLING: Jon Heberling  
09:04:46 12 representing the Plaintiffs.

09:04:48 13 MR. GRAHAM: Gary Graham of  
09:04:50 14 Garlington, Lohn & Robinson representing the  
09:04:52 15 Defendant, W.R. Grace.

09:04:56 16 MR. MURPHY: Robert Murphy of  
09:04:58 17 Casner & Edwards of Boston, Massachusetts  
09:05:00 18 representing the witness, Mr. Lovick.

09:05:02 19 THE VIDEOGRAPHER: Matt Scotten of  
09:05:04 20 Video Data Services of Whitefish.

21 THE REPORTER: And I'm Jolene Asa,  
22 and I'm the court reporter, and I'm in Kalispell,  
23 Montana.

24 I will now go ahead and swear in the  
25 witness.

09:05:50 1 A Yes, sir, I have.  
09:05:52 2 Q What has that consisted of?  
09:05:58 3 A Well, it's consisted of various things.  
09:06:02 4 It's consisted of doing some work on health matters  
09:06:04 5 for the company. It's consisted of doing some tax  
09:06:12 6 work for the company and some legislative lobbying.  
09:06:16 7 Q Okay. And included in the health work,  
09:06:18 8 have you given depositions?  
09:06:18 9 A Yes, sir, I have.  
09:06:22 10 Q When you give a deposition, are you paid  
09:06:24 11 by the company?  
09:06:26 12 A Yes, sir, I am.  
09:06:34 13 Q How much?  
09:06:38 14 A \$300 a day.  
09:06:42 15 Q And has this been true for quite some time  
09:06:44 16 for most of the depositions you've given?  
09:06:46 17 A Yes, it has.  
09:06:48 18 Q Are you paid also for preparation time for  
09:06:50 19 the depositions?  
09:06:52 20 A Yes, sir.  
09:06:54 21 Q And Mr. Murphy is here as your personal  
09:06:56 22 attorney, is he?  
09:06:58 23 A Yes, he is.  
09:07:00 24 Q Are you paying him?  
09:07:02 25 A No, sir, I'm not.

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1 If you'll raise your right hand.

2  
3 EARL D. LOVICK,  
4 being first duly sworn to tell the truth, the whole  
5 truth, and nothing but the truth, testified as  
6 follows:  
7

09:05:18 8 EXAMINATION

09:05:20 9 BY MR. HEBERLING:

09:05:22 10 Q Would you state your name for the record?

09:05:24 11 A My name is Earl D. Lovick.

09:05:26 12 Q And what is your address?

09:05:30 13 A 1021 Idaho Avenue, Libby, Montana.

09:05:30 14 Q What's your age?

09:05:32 15 A Seventy-six.

09:05:34 16 Q How long have you lived in Libby?

09:05:36 17 A I've lived there now since 1948.

09:05:38 18 Q Continuously?

09:05:38 19 A Yes.

09:05:42 20 Q And are you retired from W.R. Grace?

09:05:42 21 A Yes, sir, I am.

09:05:44 22 Q When did you retire?

09:05:46 23 A In 1983.

09:05:48 24 Q Since that time, have you done consulting  
09:05:48 25 work for W.R. Grace?

09:06:50 1 Q Do you know who does?  
09:06:52 2 A W.R. Grace is paying him.  
09:06:54 3 Q And have you given trial testimony in the  
09:07:00 4 Montana case of Carol Graham, a case of asbest  
09:07:00 5 against W.R. Grace?  
09:07:02 6 A Yes, sir, I believe I did.  
09:07:04 7 Q And have you given trial testimony in the  
09:07:06 8 Montana case of Millie Johnson, a case of -  
09:07:08 9 A Yes, sir.  
09:07:12 10 Q - asbestosis against W.R. Grace?  
09:07:12 11 A Yes, sir.  
09:07:16 12 Q Have you testified in other trials outside  
09:07:16 13 Montana?  
09:07:18 14 A Yes, I have.  
09:07:20 15 Q Could you tell us what they were?  
09:07:26 16 A I testified in a trial in Rochester,  
09:07:34 17 New York, and it was a personal injury case, I  
09:07:40 18 believe. I testified in a trial in New York that  
09:07:46 19 was a personal injury case, and I believe I  
09:07:48 20 testified in trial in Seattle.  
09:08:02 21 Q Were those all asbestosis cases?  
09:08:02 22 A Yes, sir.  
09:08:04 23 Q Have you given deposition testimony in t  
09:08:04 24 Montana cases of Julius James Robertson, Orph  
09:08:06 25 Smith, Tom DeShazer and Lawrence Carel?

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09:08:10 1 A I have given several depositions in  
 09:08:12 2 Montana, and I can't -- I don't remember  
 09:08:16 3 specifically whether those were included in them.  
 09:08:18 4 Q Have you also given testimony in the case  
 09:08:22 5 of James Gidley and Virgil Priest?  
 09:08:26 6 A Again, I'm not sure that I have. It's  
 09:08:30 7 possible. The names are both familiar to me, but I  
 09:08:32 8 don't know whether I testified in their cases or not  
 09:08:36 9 or gave depositions in those cases.  
 09:08:40 10 Q One last case. Did you give deposition  
 09:08:44 11 testimony in the case of Floyd Cole, Don Dutton, Roy  
 09:08:50 12 McMillan, Ray Belangie, Ernest Peterson?  
 09:08:52 13 A I really don't remember. I don't know.  
 09:08:56 14 Q Do you receive a pension from W.R. Grace?  
 09:08:58 15 A Yes, I do.  
 09:09:02 16 Q I'll show you what's marked Exhibit A and  
 09:09:06 17 represent to you that that is a list of the  
 09:09:08 18 depositions we received that you've given in  
 09:09:14 19 asbestos cases pursuant to a request for  
 09:09:26 20 production. Do you recognize the list of cases as  
 09:09:30 21 cases where you gave depositions? Does it appear to  
 09:09:34 22 be a list of cases where you gave depositions?  
 09:09:42 23 A Yes, it does. I can't say that I remember  
 09:09:44 24 them all specifically, but it appears to be a  
 09:09:46 25 similar list.

09:10:56 1 college.  
 09:11:00 2 Q Did you work in 1946 as a truck driver?  
 09:11:02 3 A Yes, sir, I did.  
 09:11:04 4 Q Was that after college or before?  
 09:11:08 5 A That was before I -- my college education.  
 09:11:12 6 Q Was that a summer job, or did it extend  
 09:11:14 7 longer than that?  
 09:11:16 8 A Basically, a summer job. As I recall, it  
 09:11:20 9 was like from March to September, when I started  
 09:11:22 10 school.  
 09:11:28 11 Q Okay. And then did you graduate from the  
 09:11:28 12 University of Montana?  
 09:11:28 13 A Yes, sir.  
 09:11:28 14 Q Was that 1948?  
 09:11:32 15 A I actually graduated in 1947.  
 09:11:36 16 Q Okay. Then when did you go to work for  
 09:11:36 17 Zonolite?  
 09:11:40 18 A In March of 1948.  
 09:11:42 19 Q What was your first position?  
 09:11:42 20 A Accountant.  
 09:11:46 21 Q Then in 1954 did you become an assistant  
 09:11:46 22 manager?  
 09:11:48 23 A Yes, sir.  
 09:11:52 24 Q And how did your duties change in 1954?  
 09:11:54 25 A Well, I just had more responsibility in

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09:09:48 1 Q Yeah. I understand that. Is it your  
 09:09:52 2 custom and practice to review a deposition and sign  
 09:09:52 3 it?  
 09:09:54 4 A Yes, sir.  
 09:10:00 5 Q Does Grace forward to you a copy of the  
 09:10:02 6 deposition sometime after the deposition for your  
 09:10:04 7 corrections, if any?  
 09:10:04 8 A Yes, they do.  
 09:10:08 9 Q And in the past have you made some  
 09:10:08 10 corrections?  
 09:10:10 11 A Yes, sir, I have.  
 09:10:12 12 Q And do you review the depositions  
 09:10:12 13 carefully?  
 09:10:14 14 A Yes, sir.  
 09:10:22 15 Q So if there's 22 depositions on this list,  
 09:10:26 16 would it be fair to say that you -- for 22 times you  
 09:10:30 17 have prepared for a deposition and given a  
 09:10:32 18 deposition and reviewed the deposition?  
 09:10:34 19 A Probably that's correct, yes, sir.  
 09:10:38 20 Q Is it fair to say you're familiar with the  
 09:10:44 21 history of asbestos exposure at Zonolite?  
 09:10:44 22 A Yes, I would say that's true.  
 09:10:48 23 Q Let's begin with the positions you had at  
 09:10:50 24 W.R. Grace. Did you work during college there?  
 09:10:56 25 A No, sir. I went to work after I completed

09:12:00 1 working with the general manager and worked on  
 09:12:08 2 assignments that he gave me, and the scope of my  
 09:12:08 3 work broadened.  
 09:12:10 4 Q So you had all of the same work and more  
 09:12:10 5 work?  
 09:12:12 6 A Yes, sir.  
 09:12:14 7 Q And did you hold the position of assistant  
 09:12:18 8 manager from 1954 to '68?  
 09:12:18 9 A Yes, sir.  
 09:12:22 10 Q And in 1968 what position did you assume?  
 09:12:24 11 A General manager, Libby operation.  
 09:12:26 12 Q Do you know what month that was?  
 09:12:32 13 A No, sir, I don't, but it was in the  
 09:12:36 14 midsummer. It could have been June or July.  
 09:12:40 15 Q Okay. And, then, how long were you the  
 09:12:40 16 general manager?  
 09:12:44 17 A Until 1970, I believe.  
 09:12:50 18 Q Could it have been '71?  
 09:12:50 19 A Yes, sir, it could have been.  
 09:12:58 20 Q And who became general manager in 1971?  
 09:13:02 21 A Robert Olivario.  
 09:13:04 22 Q And was that because of his expertise in  
 09:13:06 23 planning and heading up the construction of the new  
 09:13:06 24 wet mill?  
 09:13:14 25 A Yes, sir.

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09:13:14 1 Q And, then, did you continue as manager of  
09:13:14 2 administration?  
09:13:16 3 A Yes, sir.  
09:13:18 4 Q And was that from 1971 to '83?  
09:13:21 5 A Yes, sir.  
09:13:30 6 Q What is vermiculite?  
09:13:34 7 A It's a micaceous mineral which is found  
09:13:38 8 near Libby, Montana, among other places.  
09:13:40 9 Q Is there, essentially, a mountain of it  
09:13:42 10 near Libby?  
09:13:44 11 A Well, there's a mountain that contains a  
09:13:48 12 good deal of it. It would not be true to say there  
09:13:50 13 was a mountain of vermiculite.  
09:13:52 14 Q In with the vermiculite are there some  
09:13:54 15 impurities?  
09:13:54 16 A Yes, sir.  
09:13:58 17 Q Is one of them tremolite, a form of  
09:14:00 18 asbestos?  
09:14:04 19 A In the deposit at Libby, yes, that's true.  
09:14:06 20 Q Now, I've seen mention of sizes of plus  
09:14:08 21 eight and minus eight for vermiculite. What does  
09:14:10 22 that mean?  
09:14:14 23 A That is a screen size, and plus eight  
09:14:22 24 means -- That is flakes of vermiculite that will not  
09:14:24 25 pass through an eight-mesh screen, and minus eight

09:14:20 1 between the rafters and ceilings in residential  
09:14:20 2 buildings, primarily.  
09:14:24 3 Q Okay. Was vermiculite ore shipped out  
09:14:28 4 Libby, then, on railroad cars?  
09:14:28 5 A Yes.  
09:14:34 6 Q Were there also expanding plants?  
09:14:34 7 A Yes, sir.  
09:14:36 8 Q What's an expanding plant?  
09:14:40 9 A Well, before -- Basically and generally,  
09:14:42 10 before the vermiculite can be used, it must be  
09:14:44 11 processed, and the processing means exfoliating  
09:14:50 12 material, which is done in the expanding plant.  
09:14:54 13 They're so called because, when the vermiculite  
09:14:58 14 treated in an expanding plant, it increases in size  
09:15:04 15 considerably, or it expands, which is not  
09:15:08 16 technically true. Technically, it exfoliates, but  
09:15:08 17 it increases in size.  
09:15:12 18 Q When it exfoliates, does it open up and  
09:15:14 19 expand sort of like popcorn?  
09:15:18 20 A No, sir. That's the difference. It opens  
09:15:24 21 up like -- The thing that causes it to expand or  
09:15:28 22 exfoliate is molecular water, and in pages in a  
09:15:34 23 which are made up of a lot of sheets, which is  
09:15:40 24 vermiculite is, the water between those sheets  
09:15:46 25 to steam, and it expands, and it increases in size

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09:14:28 1 vermiculite is a size that will pass through an  
09:14:34 2 eight-mesh screen. And an eight-mesh screen means  
09:14:40 3 that there are eight meshes or divisions in an inch,  
09:14:42 4 but that does not mean an eighth of an inch,  
09:14:44 5 technically, because the inch includes the area  
09:14:50 6 which is taken up by the wires of the screen.  
09:14:54 7 Q Okay. What were some of the uses for the  
09:14:58 8 minus eight size vermiculite?  
09:15:02 9 A Well, there were many uses. The most  
09:15:08 10 common ones would be aggregates of one sort or  
09:15:14 11 another that went into concrete aggregate and  
09:15:18 12 insulating concrete, plaster aggregate, which became  
09:15:22 13 one of the ingredients of plasters, acoustical  
09:15:26 14 plaster and general plaster, and some of it was used  
09:15:30 15 in agricultural uses as a carrier for various  
09:15:40 16 chemicals and for block fill where it would be  
09:15:44 17 coated with a waterproofing material so that it  
09:15:52 18 would not absorb moisture and would be used to fill  
09:15:56 19 the cavities in concrete blocks that were used for  
09:15:58 20 building purposes. Those are some of the things it  
09:16:00 21 would have been used for.  
09:16:04 22 Q How about the plus eight vermiculite?  
09:16:06 23 A Basically, the largest use of plus eight  
09:16:14 24 vermiculite was used for a loose-fill insulating  
09:16:16 25 material, and that is material that was poured

09:17:04 1 in only one direction rather than overall.  
09:18:00 2 Q And was there an expanding plant in Libby?  
09:18:00 3 A Yes, sir.  
09:18:00 4 Q How long was that in operation?  
09:18:02 5 A Well, it was in Libby when I went to work  
09:18:06 6 there in 1948. It had been built some years before  
09:18:10 7 that. I don't know exactly when. I think during  
09:18:16 8 the war years. And it operated until about 1983.  
09:18:28 9 Q And, then, the product from the expanding  
09:18:30 10 plant, what did that look like?  
09:18:32 11 MR. MURPHY: Objection to the form.  
09:18:36 12 THE WITNESS: Well, I can't describe  
09:18:42 13 what it looked like. It looked like -- I don't know  
09:18:44 14 how to describe it.  
09:18:46 15 BY MR. HEBERLING:  
09:18:46 16 Q What color was it?  
09:18:48 17 A Golden color, basically, and it was very  
09:19:06 18 light, and it looked like a piece of golden flake  
09:19:08 19 which were fastened together.  
09:19:12 20 Q And the raw ore, when it was shipped  
09:19:12 21 what did it look like?  
09:19:16 22 A It was generally a dark green or a dark  
09:19:20 23 brown color, and it was in flakes of various  
09:19:24 24 depending on the size of the ore, and, again,  
09:19:30 25 hard to describe, but I can't say that it looked

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09:19:30 1 I like sand because the makeup of it is that the  
 09:19:42 2 circumference of these flakes would be larger than  
 09:19:44 3 the thickness of them.  
 09:19:48 4 Q And in the 1970s can you say how many  
 09:19:50 5 expanding plants Grace had?  
 09:19:56 6 A No. I don't remember for sure.  
 09:19:58 7 Q Was it about 20 or more than 20, do you  
 8 think?  
 09:20:04 9 A I would estimate that in the '70s there  
 09:20:08 10 were probably between 20 and 30 that Grace owned.  
 09:20:12 11 Q What were the sources for vermiculite in  
 09:20:12 12 the United States?  
 09:20:16 13 A Well, the two principal sources -- but  
 09:20:20 14 this is not exclusive -- is -- The largest source  
 09:20:22 15 was from the Libby operation, and Grace had another  
 09:20:26 16 mine in South Carolina, and there were a few other  
 09:20:32 17 smaller producers, primarily in the Carolinas and  
 09:20:34 18 Virginia.  
 09:20:36 19 Q So did Grace own the two largest sources?  
 09:20:38 20 A Yes, sir.  
 09:20:42 21 Q Now, when you went to work in 1948 at  
 09:20:50 22 Zonolite, did you know that it was dusty at the mine  
 09:20:50 23 and at the mill?  
 09:20:54 24 A After I'd been there, yes, sir, I knew  
 09:20:54 25 that.

09:21:08 1 can.  
 09:21:08 2 THE WITNESS: I don't know when it  
 09:21:08 3 was first known, but when I went to work there, it  
 09:21:08 4 was generally known that there was asbestos in that  
 09:21:08 5 deposit, because you could see it, and I would say  
 09:21:10 6 that all employees knew that there was asbestos  
 09:21:12 7 present.  
 09:21:12 8 BY MR. HEBERLING:  
 09:21:14 9 Q Do you have any personal knowledge that  
 09:21:16 10 each employee knew that?  
 09:21:18 11 A No. I can't say what each employee knew.  
 09:21:24 12 Q Then you say you could see it in the  
 09:21:28 13 deposit. When you saw the asbestos, what did it  
 09:21:30 14 look like in the raw ore in the deposit?  
 09:21:34 15 A It looked like gray rock.  
 09:21:38 16 Q And what did the vermiculite or the other  
 09:21:40 17 ore look like?  
 09:21:44 18 A It looked like dark green or brown rock.  
 09:21:46 19 Q So the asbestos was gray, and the others  
 09:21:48 20 were green or brown? Is that fair?  
 09:21:50 21 A Well, varied colors, depending on the --  
 09:21:56 22 There were many other products in there other than  
 09:22:00 23 asbestos and vermiculite, and the colors varied.  
 09:22:04 24 Q And was the asbestos an impurity in the  
 09:22:08 25 ore which the company tried to get out?

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09:20:58 1 Q Were you concerned even in 1948 regarding  
 09:21:00 2 dust as a possible health hazard?  
 09:21:00 3 A Yes, sir.  
 09:21:06 4 Q Is it correct that from 1948 on you knew  
 09:21:10 5 and the company always knew that there was a serious  
 09:21:18 6 health problem because of the large amount of dust  
 09:21:20 7 concentrated there?  
 09:21:20 8 MR. GRAHAM: Objection. Calls for  
 09:21:20 9 speculation and to form.  
 09:21:22 10 Go ahead.  
 09:21:22 11 THE WITNESS: Well, it was certainly  
 09:21:26 12 known in some areas there were large concentrations  
 09:21:30 13 of dust, and it's certainly common knowledge that  
 09:21:38 14 too much dust of any kind is not a healthy  
 09:21:38 15 situation.  
 09:21:40 16 BY MR. HEBERLING:  
 09:21:40 17 Q And did you share that concern even as  
 09:21:40 18 early as 1948?  
 09:21:42 19 A Yes, sir.  
 09:21:46 20 Q When was the first time that it was known  
 09:21:50 21 there was asbestos in the mine at Libby?  
 09:21:52 22 MR. GRAHAM: Objection. Calls for  
 09:21:54 23 speculation. Beyond the scope of this witness's  
 09:21:56 24 capabilities.  
 09:21:56 25 Go ahead and answer it to the extent you

09:22:08 1 A Yes, sir.  
 09:22:16 2 Q What was the range of percentage of  
 09:22:22 3 tremolite asbestos in the ore at Libby while you  
 09:22:24 4 were there?  
 09:22:26 5 MR. GRAHAM: Objection. Vague and  
 09:22:28 6 ambiguous, depending upon what constitutes ore.  
 09:22:30 7 THE WITNESS: I don't know what that  
 09:22:34 8 question means, because I don't know what you mean  
 09:22:40 9 by the word "Ore".  
 09:22:40 10 BY MR. HEBERLING:  
 09:22:42 11 Q Okay. In terms of the ore coming into the  
 09:22:48 12 dry mill, have you testified about what percentage  
 09:22:52 13 tremolite asbestos was in that ore in the past?  
 09:22:54 14 A Probably.  
 09:22:56 15 Q What is your best estimate of the  
 09:23:00 16 percentage asbestos in the ore coming into the dry  
 09:23:00 17 mill?  
 09:23:02 18 A I have no way of making an estimate,  
 09:23:08 19 because it depended upon when this was and where the  
 09:23:10 20 mining was actually occurring, because various parts  
 09:23:14 21 of the mine contained considerably more asbestos  
 09:23:18 22 than others, and on a particular day or particular  
 09:23:22 23 time, there could be a big variation on the amount  
 09:23:24 24 of asbestos that was in the yard.  
 09:23:26 25 Q Okay. That's why I asked you for the

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09:24:28 1 range. What would the range be in percentages?  
 09:24:34 2 A Well, that's a difficult question to  
 09:24:40 3 answer, but the range could be from zero to --  
 09:24:46 4 Theoretically, I suppose it could be up to maybe  
 09:24:46 5 30 percent.  
 09:24:56 6 Q And did you ever see samples -- the  
 09:25:00 7 results of samples taken over the years, and did you  
 09:25:02 8 see any as high as 30 percent?  
 09:25:04 9 A I don't know that I did. I don't know.  
 09:25:06 10 Q What was the highest you can recall you  
 09:25:10 11 saw as a percentage asbestos in the ore coming into  
 09:25:10 12 the dry mill?  
 09:25:14 13 A I can't answer that question, because I  
 09:25:18 14 don't know. Among other things, it was very  
 09:25:22 15 difficult to determine by looking at it what  
 09:25:24 16 percentage it would be, so it's not possible for me  
 09:25:26 17 to answer the question.  
 09:25:30 18 Q Were samples taken, and was the percentage  
 09:25:34 19 tremolite analyzed at times?  
 09:25:36 20 A Of what?  
 09:25:38 21 Q Percentage of the ore coming into the  
 09:25:40 22 mill.  
 09:25:42 23 A Not really, because we had no way of  
 09:25:46 24 testing that, no easy way of testing that. We had  
 09:25:48 25 no accurate way of testing that.

09:27:24 1 MR. HEBERLING: I'm trying to  
 09:27:26 2 discover what his position is.  
 09:27:26 3 BY MR. HEBERLING:  
 09:27:28 4 Q Did you give this answer?  
 09:27:30 5 MR. MURPHY: Objection to  
 09:27:34 6 characterizing Mr. Lovick as having a position.  
 09:27:36 7 THE WITNESS: I have every reason to  
 09:27:40 8 believe I gave that answer, and if I gave it, it was  
 09:27:44 9 to the best of my ability in making an estimate, and  
 09:27:46 10 as I said now, we had no accurate way of determin  
 09:27:52 11 that.  
 12 BY MR. HEBERLING:  
 09:27:54 13 Q What was the approximate percentage of  
 09:28:00 14 tremolite asbestos in the product going out of Libb  
 09:28:02 15 in 1948?  
 09:28:04 16 MR. MURPHY: Could you read that  
 09:28:04 17 back, please?  
 18 (The reporter then read back the  
 19 preceding question.)  
 09:28:20 20 THE WITNESS: I can't give an answer  
 09:28:26 21 to that, because I don't recall. I don't think that  
 09:28:28 22 we ever knew.  
 09:28:32 23 BY MR. HEBERLING:  
 09:28:34 24 Q Can you say what it was in the earliest  
 09:28:36 25 years, say the early '50s?

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09:25:50 1 Q Have you testified in the past that the  
 09:25:54 2 range of tremolite asbestos in the ore was between  
 09:25:56 3 5 and 20 percent?  
 09:25:58 4 A I don't know. Possibly.  
 09:26:06 5 Q I'm now showing you a deposition,  
 09:26:12 6 Plaza 600 Corporation versus W.R. Grace. Do you see  
 09:26:14 7 the question, How much tremolite, as you understand  
 09:26:18 8 it, is found when the vermiculite is being mined?  
 09:26:40 9 Answer: It varies in the area of the mine  
 09:26:42 10 where the mining activity is taking place, and the  
 09:26:46 11 variation can be quite high, from probably less than  
 09:26:50 12 5 percent to maybe as much as 20 percent in some  
 09:26:50 13 areas.  
 09:26:52 14 Were you asked that question, and did you  
 09:26:54 15 give that answer?  
 09:26:56 16 A I have every reason --  
 09:26:56 17 MR. GRAHAM: I would object on the  
 09:27:00 18 basis it's an attempt to impeach a witness on a  
 09:27:04 19 totally different question than was asked at the  
 09:27:08 20 time -- asked preceding the attempt to impeach,  
 09:27:10 21 because the question initially asked was what the  
 09:27:14 22 ore concentration or -- the concentration of  
 09:27:20 23 tremolite in the ore going into the dry mill was,  
 09:27:22 24 and this talks about the ore in the mine.  
 09:27:24 25 But go ahead.

09:28:36 1 A No, I can't say what it was. Our  
 09:28:38 2 estimates, I believe, would be probably less th  
 09:28:40 3 one percent.  
 09:28:42 4 Q From the same deposition, page 19, the  
 09:28:46 5 question is, How much asbestos or tremolite  
 09:28:50 6 the concentrate when it was ready to be shipp  
 09:28:54 7 1948? And if you want to do it according to  
 09:28:56 8 five grades, feel free to do that.  
 09:28:58 9 Answer: I can't state definitely, but an  
 09:29:00 10 estimate would have been -- In 1948 the amo  
 09:29:04 11 concentrate would have varied in some grade  
 09:29:06 12 possibly two or three percent to under one pe  
 09:29:10 13 Is that the answer you gave at the time?  
 09:29:14 14 MR. GRAHAM: Go ahead. Review it  
 09:29:16 15 you wish, Earl.  
 09:29:18 16 THE WITNESS: Yes. In answer to y  
 09:29:20 17 question, undoubtedly, this is the answer I g  
 09:29:22 18 that time, and I have no reason to dispute it  
 09:29:24 19 BY MR. HEBERLING:  
 09:29:26 20 Q And it's fairly consistent with what yc  
 09:29:28 21 told me as well; correct?  
 09:29:30 22 A Yes.  
 09:29:32 23 Q So there were some times when it was  
 09:29:34 24 little as one percent; correct?  
 09:29:36 25 MR. GRAHAM: I'd object. It



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09:30:06 1 mischaracterizes the witness's testimony.  
 09:30:08 2 BY MR. HEBERLING:  
 09:30:12 3 Q Then, as of 1983, when you retired from  
 09:30:14 4 Zonolite, what percentage of tremolite asbestos was  
 09:30:20 5 there in the product shipped out of Libby as of '83?  
 09:30:24 6 A Well, to the best of my recollection --  
 09:30:30 7 Again, this would depend on the grade, which means  
 09:30:34 8 the size of the concentrates, but it would be well  
 09:30:34 9 under one percent.  
 09:30:38 10 Q So did the company get better at removing  
 09:30:40 11 the asbestos impurity from the vermiculite?  
 09:30:42 12 A Yes, sir.  
 09:30:46 13 Q Were they ever able to remove it all?  
 09:30:46 14 A No, sir.  
 09:30:50 15 Q What was your understanding of the  
 09:30:54 16 approximate percentage asbestos in the dust in the  
 09:31:00 17 air in the dry mill in the '50s and '60s? Again,  
 09:31:02 18 you can answer with a range.  
 09:31:06 19 MR. MURPHY: Objection. Vague and  
 09:31:10 20 ambiguous and nonspecific.  
 09:31:12 21 THE WITNESS: May I hear the question  
 09:31:14 22 again, please?  
 09:31:16 23 MR. HEBERLING: Go ahead.  
 24 (The reporter then read back the  
 25 preceding question.)

09:31:32 1 the asbestos tended to defiberize, if you will, and  
 09:31:36 2 the small particles would become fibers and become  
 09:31:38 3 airborne, more so than the other materials which  
 09:31:42 4 were found in the mill feed.  
 09:31:42 5 BY MR. HEBERLING:  
 09:31:44 6 Q So would it be fair to say that the  
 09:31:48 7 tremolite more readily generated dust than some of  
 09:31:50 8 the other kinds of ore?  
 09:31:52 9 A Yes, sir, that is fair to say.  
 09:31:58 10 Q And was it your understanding that the  
 09:32:00 11 operators could see the difference in the ore in the  
 09:32:04 12 dry mill as it was coming in, whether it had a high  
 09:32:06 13 percentage asbestos or not?  
 09:32:06 14 A Yes, sir.  
 09:32:18 15 Q What did the asbestos dust in the dry mill  
 09:32:20 16 look like? What color was it?  
 09:32:26 17 A The asbestos dust, all dusts, were  
 09:32:28 18 extremely fine, and it would be too fine to identify  
 09:32:30 19 a color.  
 09:32:34 20 Q When you saw a pile of dust on the floor,  
 09:32:36 21 what color was that pile?  
 09:32:40 22 MR. MURPHY: Objection. Vague and  
 09:32:44 23 ambiguous. Nonspecific as to time.  
 09:32:46 24 THE WITNESS: I can't answer that  
 09:32:46 25 question. I don't know.

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09:31:32 1 THE WITNESS: There was no way to  
 09:31:36 2 accurately determine what percentage of the dust in  
 09:31:42 3 the mill was asbestos and what percentage was other  
 09:31:48 4 materials. There were various attempts made to  
 09:31:54 5 determine that, and as I recall the tests which came  
 09:32:02 6 back, it was estimated that the dust would vary from  
 09:32:14 7 a percentage asbestos of maybe five or six percent  
 09:32:16 8 and -- There was one test I recall where it was  
 09:32:20 9 estimated to be 40 percent.  
 09:32:20 10 BY MR. HEBERLING:  
 09:32:26 11 Q Okay. So if the asbestos was, say, five  
 09:32:32 12 percent or thereabouts in the raw ore, why would it  
 09:32:36 13 be 20 or even 40 percent asbestos in the dust in the  
 09:32:36 14 air in the dry mill?  
 09:32:40 15 MR. MURPHY: Objection. Vague and  
 09:32:44 16 ambiguous.  
 09:32:50 17 THE WITNESS: There is a reason for  
 09:32:56 18 that, and that is that the asbestos in the ore is  
 09:33:02 19 all forms of asbestos, some of it in rather large  
 09:33:06 20 chunks. In the dry mill the dust in the air is very  
 09:33:10 21 fine particles, and the nature of the asbestos is,  
 09:33:14 22 in the processing and concentration of the  
 09:33:18 23 material -- In the dry mill this was done by  
 09:33:20 24 crushing and screening, and the very nature of the  
 09:33:24 25 asbestos was that, when this material is crushed,

09:34:46 1 BY MR. HEBERLING:  
 09:34:48 2 Q Did it vary in color?  
 09:34:48 3 A Oh, yes.  
 09:34:50 4 Q It wasn't always a light color?  
 09:34:52 5 A No.  
 09:34:54 6 Q Was it sometimes a dark color?  
 09:34:54 7 A Yes, sir.  
 09:34:58 8 Q What year did W.R. Grace close in Libby?  
 09:35:00 9 A 1990.  
 09:35:06 10 Q And why was that?  
 09:35:04 11 MR. GRAHAM: Objection. Calls for  
 09:35:04 12 speculation.  
 09:35:06 13 BY MR. HEBERLING:  
 09:35:10 14 Q Have you discussed with Mr. Walter or  
 09:35:14 15 Mr. McKay reasons for closing?  
 09:35:22 16 A Well, the reasons for closing is that the  
 09:35:24 17 markets didn't justify continuing that operation.  
 09:35:34 18 Q And was Scott's Lawn Fertilizer, the Scott  
 09:35:38 19 Company, a major customer of Zonolite?  
 09:35:40 20 MR. GRAHAM: Objection. Vague as to  
 09:35:42 21 time.  
 09:35:44 22 THE WITNESS: At one time they were,  
 09:35:44 23 yes, sir.  
 09:35:46 24 BY MR. HEBERLING:  
 09:35:50 25 Q Would that have been in the '70s and early

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09:35:50 1 '80s?  
 09:35:54 2 A No, sir. Not in the early '80s. Prior to  
 09:35:54 3 that.  
 09:36:00 4 Q Okay. And did Scott pull out?  
 09:36:02 5 A I don't know what that means.  
 09:36:06 6 Q Did Scott no longer send orders into  
 09:36:08 7 Zonolite for vermiculite?  
 09:36:10 8 A Yes, sir.  
 09:36:12 9 Q What's your understanding of the reason  
 09:36:12 10 for that?  
 09:36:14 11 A I don't know what the reason was.  
 09:36:18 12 Q Did it have anything to do with asbestos?  
 09:36:18 13 A I don't know.  
 09:36:20 14 MR. GRAHAM: Objection. Asked and  
 09:36:20 15 answered.  
 09:36:22 16 BY MR. HEBERLING:  
 09:36:26 17 Q Now, was one reason that Zonolite closed  
 09:36:30 18 the asbestos contamination in the product?  
 09:36:34 19 MR. GRAHAM: Objection. Foundation.  
 09:36:34 20 Calls for speculation.  
 09:36:36 21 THE WITNESS: Yes, sir. I don't  
 09:37:04 22 know.  
 09:37:06 23 BY MR. HEBERLING:  
 09:37:06 24 Q I'm showing you a copy of your deposition  
 09:37:14 25 which was taken May 27, 1992, and there's a

09:36:22 1 A I don't know that that's true. I don't  
 2 know.  
 09:36:22 3 Q Is it true that the concentrated product  
 09:36:28 4 delivered to customers had less asbestos in it than  
 09:36:32 5 the ore that the workers in Libby were working  
 09:36:32 6 with?  
 09:36:34 7 MR. GRAHAM: Objection. It's vague  
 09:36:38 8 and ambiguous as to, The ore that the Libby worke  
 09:36:40 9 were working with.  
 09:36:42 10 THE WITNESS: I don't really know  
 09:36:50 11 what your question means, but the amount of asbe  
 09:36:52 12 that was in the concentrate that was shipped was  
 09:36:56 13 certainly less than what was contained in the mill  
 09:37:02 14 feed.  
 09:37:04 15 BY MR. HEBERLING:  
 09:37:06 16 Q Can you say how many tons of ore were  
 09:37:08 17 mined per day in the '50s?  
 09:37:10 18 A No. I don't recall.  
 09:37:12 19 Q Or the '60s?  
 09:37:14 20 A I don't recall.  
 09:37:16 21 Q Or the '70s?  
 09:37:16 22 A I don't recall.  
 09:37:34 23 Q I'm now showing you your deposition take  
 09:37:44 24 December 20, 1983.  
 09:37:46 25 MR. MURPHY: Almost exactly thirteen

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09:37:16 1 question, Do you know why the market was gone?  
 09:37:20 2 Answer: Well, I think of number of  
 09:37:22 3 reasons, and one of them would have been asbestos  
 09:37:26 4 contamination or believed to have been asbestos  
 09:37:28 5 contamination, although the company had pretty much  
 09:37:32 6 solved that problem, but many of the customers were  
 09:37:34 7 afraid of the product.  
 09:37:36 8 Did you give that answer?  
 09:37:38 9 MR. MURPHY: Objection. Improper  
 09:37:42 10 attempt at impeachment. Nothing inconsistent in the  
 09:37:46 11 answers previously given.  
 09:37:50 12 THE WITNESS: It's stated in the  
 09:37:52 13 deposition. I have every reason to believe that I  
 09:37:56 14 would have given it, and that would have been my  
 09:37:58 15 understanding at that time.  
 09:38:06 16 BY MR. HEBERLING:  
 09:38:08 17 Q So the customers were afraid of the  
 09:38:10 18 concentrated product, the product that was delivered  
 09:38:12 19 to them?  
 09:38:14 20 MR. GRAHAM: Same objection.  
 09:38:16 21 Foundation. Calls for speculation.  
 09:38:18 22 MR. MURPHY: And misstates his  
 09:38:18 23 testimony.  
 09:38:18 24 BY MR. HEBERLING:  
 09:38:20 25 Q Go ahead.

09:39:46 1 years ago to the day.  
 09:39:48 2 BY MR. HEBERLING:  
 09:39:52 3 Q Is it fair to say your recollection may  
 09:39:56 4 have been a little clearer in 1983 as to what  
 09:39:58 5 done in the 1950s and '60s?  
 09:40:00 6 A Yes, sir. That would be a fair statement.  
 09:40:04 7 Q Okay. Did you give the answer, The  
 09:40:08 8 quantity of material moved -  
 09:40:10 9 MR. GRAHAM: I would object.  
 09:40:12 10 Improper impeachment. If you're going to  
 09:40:14 11 let's read the questions.  
 09:40:16 12 MR. HEBERLING: Okay. I'll go bac  
 09:40:18 13 MR. MURPHY: If you're trying to  
 09:40:20 14 refresh his recollection, you could ask him t  
 09:40:22 15 something and see if it refreshes his recollec  
 09:40:24 16 and ask him the question again, if that's wh  
 09:40:26 17 you're trying to do.  
 09:40:26 18 MR. HEBERLING: Okay.  
 09:40:28 19 BY MR. HEBERLING:  
 09:40:30 20 Q I'll read the question to you. How m  
 09:40:32 21 mines have there been at the Libby facility  
 09:40:32 22 years?  
 09:40:32 23 One.  
 09:40:34 24 What size mine is it?  
 09:40:38 25 A physical size or quantity size?

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09:40:38 1 Question: Both.  
 09:40:40 2 A Physically -- I believe the mine area is  
 09:40:44 3 approximately 400 acres. The quantity of material  
 09:40:46 4 moved has varied over the period, but it has been as  
 09:40:50 5 high as approximately 25,000 tons a day.  
 09:40:54 6 Question: When did it reach the peak of  
 09:40:56 7 25,000 tons a day, during what period?  
 09:40:58 8 Answer: In the 1970s.  
 09:41:00 9 How much were you turning out during  
 09:41:04 10 the -- let's say 1950 to 1960 on average per day?  
 09:41:06 11 Answer: This is a rough estimate, but I  
 09:41:08 12 would think probably 15,000 tons.  
 09:41:10 13 How about in the 1960s?  
 09:41:10 14 About the same.  
 09:41:14 15 Were those the answers you gave at the  
 16 time?  
 09:41:14 17 A Apparently, yes.  
 09:41:16 18 Q And does that refresh your recollection as  
 09:41:20 19 to what the quantities were?  
 09:41:24 20 A Well, I can't say that it does, but if I  
 09:41:26 21 gave those answers at that time, it must have been  
 09:41:30 22 my belief that that's -- that they were correct.  
 09:41:42 23 Q I'm now showing you Exhibit B, which is  
 09:41:54 24 titled, A Manager's Time Line. I sent a copy to  
 09:41:58 25 counsel, an advanced copy. Have you had a chance to

09:41:16 1 been in the early '50s he moved back to Chicago  
 09:41:18 2 where he became president of Zonolite Company.  
 09:41:24 3 Q Okay. And so did he become president in  
 09:41:26 4 about 1954?  
 09:41:34 5 A It was the early '50s. About 1954 could  
 09:41:36 6 be correct. I don't know exactly -- the exact date.  
 09:41:40 7 Q Okay. Having reviewed this managers' time  
 09:41:46 8 line, have you found any places where we were  
 09:41:48 9 incorrect in putting this together?  
 09:41:52 10 A Well, you've got here Myers, Kelley,  
 09:41:54 11 Sterrett and Vining on the top line, and over on the  
 09:41:58 12 side you've got Walsh, Vining and Wolter. There  
 09:42:00 13 were a couple of other names in there that are  
 09:42:04 14 missing that at various times they were responsible  
 09:42:06 15 for the Libby operation.  
 09:42:08 16 And on the Kostic thing, from 1963 to  
 09:42:12 17 1980, the safety supervisor, that is incorrect,  
 09:42:16 18 because in the early 1970s the safety supervisor was  
 09:42:20 19 Harry Eschenbach.  
 09:42:26 20 Q Then did Mr. Kostic remain with W.R. Grace  
 09:42:28 21 until about 1980?  
 09:42:36 22 A He remained with W.R. Grace. I don't know  
 09:42:40 23 when he left, but 1980 would probably be close.  
 09:42:44 24 Q Okay. What position was he in after  
 09:42:48 25 Mr. Eschenbach took the safety supervisor position?

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09:41:58 1 review this?  
 09:42:00 2 A Yes, sir, I have seen this.  
 09:42:02 3 Q We put this together based on answers  
 09:42:06 4 earlier, but we want to get it correct, and so if --  
 09:42:10 5 The purpose is to determine, you know, who was in  
 09:42:14 6 what position over the years, and having reviewed  
 09:42:18 7 it, do you have any corrections to make? Does it  
 09:42:20 8 appear correct?  
 09:42:24 9 A Well, No, I, where it says, "Back east.  
 09:42:28 10 Supervisor who the plant manager reports to," I  
 09:42:30 11 don't know what that means.  
 09:42:34 12 Q Okay. You have a plant manager in Libby  
 09:42:36 13 who is the head of operations there; correct?  
 09:42:36 14 A Yes.  
 09:42:40 15 Q And then we're looking for the person who  
 09:42:44 16 the plant manager reports to.  
 09:42:44 17 A Okay.  
 09:42:46 18 Q So would it have been Mr. Myers up until  
 09:42:48 19 1954?  
 09:42:54 20 A Yes, sir.  
 09:42:58 21 Q Now, was Mr. Myers in Libby for a period  
 09:43:02 22 of time when you were first there in the early '50s?  
 09:43:06 23 A Yes. When I -- No. When I came in 1948,  
 09:43:08 24 Mr. Myers was in Libby, and he left some time after  
 09:43:12 25 that. I don't know when. I think it would have

09:44:32 1 A He was still a safety engineer out of the  
 09:44:34 2 Cambridge office, in our division office.  
 09:44:38 3 Q But Mr. Eschenbach was his superior from  
 09:44:40 4 early '70s on?  
 09:44:42 5 A Yes, sir. I believe so.  
 09:44:44 6 Q Can you say after 1968 who the Libby plant  
 09:44:46 7 manager reported to? We have Vining there up until  
 09:44:48 8 about '71. Do you happen to know who it was in the  
 09:44:50 9 '70s?  
 09:44:52 10 A Well, the chain of command was that --  
 09:44:54 11 reported to O.F. Stewart who was in South Carolina,  
 09:44:56 12 who, in turn, reported to H.A. Brown, who was a  
 09:44:58 13 vice-president of our division, and, then, after  
 09:45:00 14 H.A. Brown, there were a couple of other people.  
 09:45:02 15 One of them's name was Tom Lyall, and another one  
 09:45:04 16 was E.S. Wood, but I can't tell you the dates that  
 09:45:06 17 they were there.  
 09:45:10 18 Q So in the 1970s did the Libby plant  
 09:45:12 19 manager report to Mr. Stewart, generally?  
 09:45:14 20 A Yes.  
 09:45:16 21 Q And how long was he with -- How long was  
 09:45:18 22 he in that position, Mr. Stewart, up until the time  
 09:45:20 23 you retired?  
 09:45:22 24 A No. I think when I -- I think he was out  
 09:45:24 25 of that position before I retired.

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09:46:46 1 Q Okay. Then, in the Libby section of this  
09:46:48 2 time line, do you have any corrections to make?  
09:47:04 3 A The only thing that I see here that I  
09:47:10 4 would question -- And I can't see anything that I  
09:47:16 5 recall as, basically, wrong on the positions above  
09:47:20 6 that, but the construction supervisor, Don Riley,  
09:47:26 7 from 1968 on, that is incorrect.  
09:47:30 8 Q Now, he would have -- Let's see. He  
09:47:34 9 stopped working in -- Didn't he stop in about 1986?  
09:47:40 10 A I don't know. I was gone, but I think  
09:47:42 11 that's about right, but prior to him was a man by  
09:47:46 12 the name of Tom DeShazer, who is actually  
09:47:50 13 construction supervisor, and I don't remember --  
09:47:54 14 recall what date Don Riley took over, but it wasn't  
09:47:56 15 in '68.  
09:47:58 16 Q You think it was later?  
09:47:58 17 A Yes.  
09:48:06 18 Q Okay. And that's the only correction that  
09:48:08 19 you're offering for the Libby section of the  
09:48:10 20 managers' time line?  
09:48:12 21 A I think so, yes.  
09:48:18 22 THE WITNESS: I wonder if it would be  
09:48:20 23 possible to have a short break?  
09:48:22 24 MR. HEBERLING: Sure.  
09:48:24 25 THE VIDEOGRAPHER: We're going off

09:53:30 1 Go ahead and answer to the extent you  
09:53:30 2 can.  
09:53:32 3 THE WITNESS: Well, of course I'm  
09:53:36 4 concerned about when any of my friends die  
09:53:40 5 reason, so in that respect the answer would be  
09:53:40 6 Yes.  
09:53:42 7 BY MR. HEBERLING:  
09:53:44 8 Q In about 1983 did you collect death  
09:53:46 9 certificates for ex-workers from Zonolite at the  
09:53:50 10 request of W.R. Grace?  
09:53:56 11 A Well, yes, I did. I did collect death  
09:54:00 12 certificates of ex-workers.  
09:54:02 13 Q And what is your understanding of what  
09:54:02 14 mesothelioma is?  
09:54:10 15 A It's a rare form of cancer.  
09:54:14 16 Q Are you aware that it's virtually always  
09:54:22 17 related to asbestos exposure?  
09:54:24 18 MR. MURPHY: Objection to the form  
09:54:24 19 THE WITNESS: As I understand,  
09:54:32 20 asbestos is usually attributed to be a cause of  
09:54:32 21 mesothelioma.  
09:54:32 22 BY MR. HEBERLING:  
09:54:32 23 Q Do you know workers who have died of  
09:54:34 24 mesothelioma?  
09:54:34 25 A Yes, sir.

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09:48:26 1 the record. It's approximately 9:48.  
09:48:28 2 (Brief recess.)  
09:52:22 3 THE VIDEOGRAPHER: Okay. We're back  
09:52:28 4 on the record. It's approximately 9:52.  
09:52:30 5 BY MR. HEBERLING:  
09:52:32 6 Q What is your understanding of what  
09:52:34 7 asbestosis is?  
09:52:40 8 A My understanding is it's a disease of the  
09:52:40 9 lungs.  
09:52:46 10 Q And to your knowledge have ex-workers at  
09:52:48 11 Zonolite died of asbestosis?  
09:52:52 12 A Well, to my knowledge, ex-workers of  
09:52:56 13 Zonolite who have died, one of the causes of death  
09:53:00 14 is asbestosis. I don't recall whether any of  
09:53:04 15 them -- their death certificate stated that that was  
09:53:06 16 the primary cause, but it would have been one of the  
09:53:08 17 contributing factors.  
09:53:10 18 Q Were some of these people friends of  
09:53:12 19 yours?  
09:53:14 20 A Yes, sir.  
09:53:16 21 Q And does the number of them with  
09:53:22 22 asbestosis as a cause of death concern you?  
09:53:24 23 MR. GRAHAM: I would object on the  
09:53:26 24 basis that it's irrelevant and immaterial to the  
09:53:28 25 issues of this lawsuit and prejudicial.

09:54:36 1 Q Can you give us some names?  
09:54:40 2 A McNair, Olson, Baker.  
09:54:46 3 Q Is that Virgil Olson or Vergel?  
09:54:48 4 A Verle, V-E-R-L-E.  
09:54:52 5 Q And Morland Baker?  
09:54:56 6 A Yes, sir. McNair, Michael McNair, I  
09:55:06 7 believe was his name, and those are the three that  
09:55:12 8 come to mind. There's at least one other that --  
09:55:14 9 Q Is there Clarence Peterson also?  
09:55:16 10 A Yes, sir, Clarence Peterson.  
09:55:18 11 Q And was there an Ernest Roberts who died  
09:55:22 12 of mesothelioma who is not a worker at W.R. Grace?  
09:55:24 13 A Yes, sir. To my understanding he was a  
09:55:28 14 Libby resident, and he died of mesothelioma, but  
09:55:30 15 had never been an employee of Grace.  
09:55:34 16 Q Do you know if he lived down near the  
09:55:36 17 railroad tracks and the bridge on the edge of town?  
09:55:38 18 A To my knowledge and memory, he did not  
09:55:40 19 live in that area, no.  
09:55:44 20 Q Do you know if he was exposed as a child  
09:55:46 21 playing on piles of the ore near the baseball  
09:55:48 22 fields?  
09:55:50 23 A I would have no idea about that. I don't  
09:55:54 24 know.  
09:55:54 25 Q Do you know what his exposure was?

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09:55:54 1 A No, sir.  
 09:55:56 2 Q And did Dale Thompson also die of  
 09:56:02 3 mesothelioma?  
 09:56:02 4 A I don't know.  
 09:56:04 5 Q How about Ed Wittlake?  
 09:56:06 6 A I don't know. I know both of them are  
 09:56:08 7 dead, but I don't know what the causes of their  
 09:56:10 8 death were.  
 09:56:12 9 Q In 1948 who was responsible for worker  
 09:56:14 10 safety?  
 09:56:18 11 A Well, in 1948 the general manager would  
 09:56:18 12 have been responsible.  
 09:56:24 13 Q What is your understanding of what an  
 09:56:26 14 industrial hygienist is?  
 09:56:34 15 A Well, an industrial hygienist would be one  
 09:56:42 16 who I expect would be an expert in industrial  
 09:56:42 17 hygiene.  
 09:56:44 18 Q Is there such a thing as an industrial  
 09:56:46 19 hygiene engineer?  
 09:56:46 20 A I don't know.  
 09:56:50 21 Q Do you know what is included within the  
 09:56:52 22 area of industrial hygiene?  
 09:56:56 23 A Well, I would think the broad definition  
 09:57:04 24 would be any malady or any disease which was  
 09:57:06 25 industrially caused.

1 happened?  
 09:58:34 2 A Well, Zonolite became a part of W.R. Grace  
 09:58:36 3 by an exchange of stock, of Zonolite Company stock  
 09:58:40 4 for W.R. Grace stock.  
 09:58:46 5 Q Is it fair to say that W.R. Grace acquired  
 09:58:46 6 Zonolite?  
 09:58:48 7 MR. GRAHAM: Objection. Foundation.  
 09:58:52 8 THE WITNESS: It would have been a  
 09:58:54 9 merger, and I don't know if that's an acquisition or  
 09:58:56 10 not. I suppose it is, because W.R. Grace was the  
 09:59:00 11 larger of the two.  
 09:59:02 12 BY MR. HEBERLING:  
 09:59:04 13 Q Before 1963 do you recall consulting with  
 09:59:10 14 an industrial hygienist ever?  
 09:59:16 15 A I don't recall of it happening, no, sir.  
 09:59:20 16 Q In the 1950s and up to 1963, who was  
 09:59:24 17 responsible for dust control at Zonolite?  
 09:59:26 18 A The general manager at Libby would have  
 09:59:28 19 been responsible.  
 09:59:30 20 Q Was there an engineer who had  
 09:59:32 21 responsibility for that, or was it just under the  
 09:59:34 22 general responsibility of the general manager?  
 09:59:36 23 A Well, it would have been under the general  
 09:59:44 24 responsibility of the general manager, but the  
 09:59:46 25 general manager certainly could have assigned

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09:57:10 1 Q And would that also include dust control  
 09:57:10 2 and ventilation?  
 09:57:16 3 A I don't know what that has -- I don't know  
 09:57:18 4 what -- In that sense I would say, No.  
 09:57:24 5 Q Did you ever have an industrial hygienist  
 09:57:28 6 at Zonolite while you were there?  
 09:57:28 7 A No, sir.  
 09:57:32 8 Q Did you ever consult with one?  
 09:57:36 9 A Well, I don't know what that means either,  
 09:57:46 10 but both Peter Kostic and Harry Eschenbach, I  
 09:57:52 11 believe, would be industrial hygienists, and they  
 09:57:54 12 came to Libby and visited our operation, and we  
 09:57:54 13 consulted with them, of course.  
 09:57:56 14 Q And so Mr. Kostic would have come on board  
 09:58:00 15 for Zonolite in 1963 when Grace acquired Zonolite?  
 09:58:04 16 MR. MURPHY: Objection to the form.  
 09:58:06 17 MR. GRAHAM: I would -- Yeah.  
 09:58:08 18 THE WITNESS: He would have come on  
 09:58:12 19 board after -- He worked for the division of which  
 09:58:16 20 the Zonolite operation was a part of, and he would  
 09:58:20 21 have been -- become involved after W.R. Grace took  
 09:58:24 22 over.  
 09:58:24 23 BY MR. HEBERLING:  
 09:58:28 24 Q Did W.R. Grace acquire Zonolite? You say  
 09:58:30 25 they took over. What is your understanding of what

1 somebody to be responsible.  
 09:59:54 2 Q To your knowledge did that happen in the  
 09:59:56 3 1950s, up to 1963?  
 10:00:02 4 A Yes, sir. I think that those duties would  
 10:00:06 5 have been given to one of the -- probably the chief  
 10:00:10 6 engineer at Libby. One of them that would have had  
 10:00:12 7 that responsibility in that period would have been  
 10:00:14 8 Ray Kujawa.  
 10:00:18 9 Q Okay. Let's begin with Exhibit 12 in the  
 10:00:30 10 green book in front of you. Does that appear to be  
 10:00:40 11 a memo from J.A. Kelley to Mr. Friddle, Stewart and  
 10:00:42 12 Williams dated April 22, 1952?  
 10:00:54 13 A Yes, sir. I would say that's what it  
 10:00:54 14 appears to be.  
 10:01:00 15 Q Now, who was Mr. Kelley in 1952?  
 10:01:10 16 A In 1952, as I recall, J.A. Kelley was the  
 10:01:20 17 general manager of the South Carolina operation.  
 10:01:24 18 Q Okay. Was he higher up in the company  
 10:01:28 19 than the Libby plant manager?  
 10:01:36 20 A I don't know.  
 10:01:42 21 Q And who are Mr. Friddle, Stewart and  
 10:01:42 22 Williams?  
 10:01:48 23 A The only one that I have knowledge of  
 10:01:54 24 would be O.F. Stewart, and he was at the  
 10:02:00 25 South Carolina operation, and it is possible -- But

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10:02:10 1 I don't know this for sure. It is possible that at  
 10:02:12 2 that time Mr. Kelley was a vice-president of  
 10:02:20 3 Zonolite Company, and Mr. Stewart could have been  
 10:02:24 4 responsible for the South Carolina operation. I  
 10:02:28 5 don't remember when that change took place, but it  
 10:02:34 6 could have been in 1952 or prior to that, a little  
 10:02:34 7 bit prior.  
 10:02:40 8 Q Do you think you saw a copy of this memo  
 10:02:40 9 in 1952?  
 10:02:42 10 A No, sir. To my recollection I've never  
 10:02:44 11 seen this before right now.  
 10:02:48 12 Q In 1952 did you get any directives from  
 10:02:54 13 the company as to dust, Something has got to be done  
 10:02:54 14 now?  
 10:02:56 15 A Not that I recall, no, sir.  
 10:03:04 16 Q Do you recall efforts in 1952 to reduce  
 10:03:06 17 the amount of dust at the operation in Libby?  
 10:03:12 18 A Well, I can't recall anything specifically  
 10:03:16 19 in 1952, but dust was always a concern, and there  
 10:03:20 20 were always efforts being made to reduce the dust  
 10:03:22 21 levels as much as possible.  
 10:03:24 22 Q Do you remember any campaign in the early  
 10:03:28 23 '50s to really put steam behind the effort to  
 10:03:30 24 reduce the dust?  
 10:03:32 25 MR. GRAHAM: Objection. Vague and

10:05:12 1 Q And does it appear that Mr. Myers is in  
 10:05:18 2 Libby? Do you see "Libby" next to Mr. Myers's  
 10:05:18 3 A Yes, sir.  
 10:05:22 4 Q Who was Mr. Huxley?  
 10:05:26 5 A Mr. Huxley was an engineer that was  
 10:05:34 6 employed at Libby, and later on he was transferred  
 10:05:40 7 to Chicago. He was the engineer that was in charge  
 10:05:46 8 of expanding plants, design and -- particularly,  
 10:05:48 9 rather than operation.  
 10:05:54 10 Q Did you say he was a mining engineer?  
 10:05:54 11 A No. I said he was an engineer.  
 10:05:56 12 Q Do you know what kind of engineer?  
 10:05:56 13 A No, sir, I don't. He was a graduate of  
 10:06:00 14 the Montana School of Mines, but I don't know w  
 10:06:02 15 his engineer designation would have been.  
 10:06:12 16 Q Okay. Did you see this memo in Libby at  
 10:06:12 17 or about its date?  
 10:06:16 18 A I have no reason to think that I've ever  
 10:06:16 19 seen this letter before right now.  
 10:06:22 20 Q Okay. Does this appear to be the format  
 10:06:26 21 of a memo that Mr. Myers would have produced in  
 10:06:26 22 Libby?  
 10:06:28 23 MR. GRAHAM: Objection.  
 24 MR. MURPHY: Objection.  
 10:06:28 25 MR. GRAHAM: Foundation.

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10:03:32 1 ambiguous.  
 10:03:34 2 Go ahead and answer to the extent you  
 10:03:34 3 can.  
 10:03:36 4 BY MR. HEBERLING:  
 10:03:38 5 Q Does anything stand out to you?  
 10:03:40 6 A No, sir.  
 10:03:48 7 Q Okay. Let's go to No. 13. Does this  
 10:03:56 8 appear to be a letter by Paul Woolrich of the  
 10:03:58 9 Department of Health, Education & Welfare, Public  
 10:04:02 10 Health Service to Benjamin Wake, State of Montana  
 10:04:04 11 Board of Health, dated October 31, 1955?  
 10:04:20 12 A Did you ask a question? I'm sorry.  
 10:04:24 13 Q Yes. Does it appear to be the letter as I  
 10:04:24 14 described it?  
 10:04:24 15 A Yes, sir.  
 10:04:28 16 Q Do you think you saw this letter in the  
 10:04:30 17 1950s in Libby?  
 10:04:32 18 A I don't recall ever seeing this letter  
 10:04:32 19 before right now.  
 10:04:46 20 Q Okay. Please refer to Exhibit 14.  
 10:04:48 21 A What number?  
 10:04:50 22 Q 14, the next one. Does this appear to be  
 10:05:02 23 a memo of J.B. Myers to Mr. John Huxley dated  
 10:05:04 24 December, it looks like, 21, 1955?  
 10:05:06 25 A Yes, sir.

10:06:30 1 Speculation.  
 10:06:30 2 BY MR. HEBERLING:  
 10:06:32 3 Q Okay. Were you familiar with how me  
 10:06:36 4 were prepared in Libby and sent to Chicago?  
 10:06:38 5 A I don't know what that means. I would  
 10:06:42 6 assume that they're prepared by a secretary.  
 10:06:48 7 Q Did you have a standard format, for  
 10:06:52 8 example, putting the addressee on the top and  
 10:06:56 9 the name under that being the sender of the m  
 10:06:56 10 A Yes, sir. That was standard.  
 10:07:04 11 Q And as of 1955, were you in charge of  
 10:07:06 12 record keeping for Zonolite?  
 10:07:12 13 A I don't know that I was ever given that  
 10:07:14 14 designation, no, sir.  
 10:07:18 15 Q Well, as assistant manager, was record  
 10:07:22 16 keeping something that was within your area  
 10:07:22 17 responsibility?  
 10:07:24 18 A I suppose you could say, Yes.  
 10:07:28 19 Q And did the secretaries and whoever else  
 10:07:32 20 worked in the office work under you, except  
 10:07:32 21 plant manager, of course?  
 10:07:34 22 A Yes, sir.  
 10:07:38 23 Q Does this memo appear to have a forma  
 10:07:40 24 a memo that would have been sent out in 195  
 10:07:44 25 MR. GRAHAM: Asked and answered.

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10:07:46 1 MR. MURPHY: And, also, lack of  
 10:07:50 2 foundation. The memo has nothing to do with the  
 10:07:54 3 Libby mine and mill, and your questions make those  
 10:07:58 4 assumptions, I believe, or imply that.  
 10:07:58 5 MR. HEBERLING: The memo talks about  
 10:08:02 6 "The danger of exposing our employees to asbestos  
 10:08:04 7 dust". That's the subject of this case.  
 10:08:04 8 MR. MURPHY: But if you read the  
 10:08:08 9 whole thing, if you want to put this in fair  
 10:08:10 10 context, it's talking about plants and the  
 10:08:16 11 manufactured products at plants.  
 12 THE WITNESS: I have not --  
 10:08:18 13 BY MR. HEBERLING:  
 10:08:22 14 Q Okay. Do you remember the -- Go ahead and  
 10:08:24 15 make your comment.  
 10:08:26 16 A All that I have read as of right now is  
 10:08:28 17 the first sentence, which I will repeat. "I have  
 10:08:30 18 previously written to you about the danger of  
 10:08:34 19 exposing our employees to asbestos dust while they  
 10:08:38 20 are manufacturing acoustical plastic," which has  
 10:08:42 21 nothing to do with the asbestos which was found in  
 10:08:44 22 Libby.  
 10:08:44 23 Q In Libby in 1955 were you aware of the  
 10:08:48 24 danger of exposing employees to asbestos dust?  
 10:08:52 25 MR. MURPHY: Objection to the form.

10:10:04 1 Q What's his full name, John B. Myers?  
 10:10:04 2 A Yes, sir.  
 10:10:14 3 Q Do you know if Mr. Huxley had any training  
 10:10:18 4 in control of industrial dust?  
 10:10:20 5 A No, sir, I don't know.  
 10:10:22 6 Q When he was in Libby, did he have anything  
 10:10:24 7 to do with dust control?  
 10:10:28 8 A No, sir. Not to my knowledge.  
 10:10:30 9 Q What was his job when he was in Libby, to  
 10:10:30 10 your understanding?  
 10:10:34 11 A His job was on research and development of  
 10:10:36 12 expanding plants.  
 10:10:42 13 Q Okay. Let's refer to Exhibit 15, and does  
 10:10:50 14 this appear to be a letter from Ben Wake, State of  
 10:10:54 15 Montana, to Dohrman Byers, Public Health Service in  
 10:10:58 16 Ohio, dated August 13, 1956?  
 10:10:58 17 A Yes, sir.  
 10:11:00 18 Q Do you think you saw this in Libby in the  
 10:11:02 19 1950s?  
 10:11:04 20 A I don't recall, no, sir.  
 10:11:16 21 Q Go to Exhibit 16, and does this appear to  
 10:11:20 22 be another letter from Mr. Wake to Mr. Dohrman Byers  
 10:11:22 23 dated September 12th, 1956?  
 10:11:24 24 A Yes, sir.  
 10:11:28 25 Q Do you think you saw this letter in Libby

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10:09:00 1 You mean at the Libby mine and mill? When you say  
 10:09:02 2 "At Libby" -- I object. Vague and ambiguous.  
 10:09:04 3 BY MR. HEBERLING:  
 10:09:06 4 Q Okay. At the mine and mill in Libby, were  
 10:09:10 5 you aware of the danger of exposing employees to  
 10:09:12 6 asbestos dust as of 1955?  
 10:09:16 7 A I don't recall, but I don't believe that I  
 10:09:18 8 was aware of this hazard.  
 10:09:22 9 Q So is it your belief that you hadn't  
 10:09:26 10 discussed that with Mr. Myers as of 1955?  
 10:09:26 11 MR. GRAHAM: I'd object. That  
 10:09:32 12 assumes that Mr. Myers was aware of the dangers of  
 10:09:34 13 asbestos dust in Libby as opposed to a different  
 10:09:40 14 form of asbestos dust in the manufacturing process.  
 10:09:42 15 Go ahead and answer it to the extent you  
 10:09:42 16 can.  
 10:09:44 17 THE WITNESS: I don't believe I ever  
 10:09:48 18 would have discussed this with Mr. Myers, no, sir.  
 10:09:50 19 BY MR. HEBERLING:  
 10:09:52 20 Q Is Mr. Myers still alive?  
 10:09:54 21 A To the best of my knowledge, yes.  
 10:09:54 22 Q Do you know where he is?  
 10:09:56 23 A San Diego.  
 10:09:58 24 Q Do you know his address?  
 10:09:58 25 A No, sir.

10:11:30 1 in the 1950s?  
 10:11:32 2 A No, sir, I don't recall.  
 10:11:36 3 Q Okay. Let's go to Exhibit 17. Does this  
 10:11:44 4 appear to be a letter from Mr. Wake to Mr. Bleich, I  
 10:11:48 5 should say? Is that the proper pronunciation,  
 10:11:50 6 Mr. R.A. Bleich?  
 10:11:50 7 A Yes, sir.  
 10:11:52 8 Q Dated September 21, 1956?  
 10:11:54 9 A Yes, sir.  
 10:11:58 10 Q And did you see this document in Libby in  
 10:12:00 11 the 1950s?  
 10:12:00 12 A Yes, sir.  
 10:12:06 13 Q Did you see it at or about its date?  
 10:12:06 14 A Probably, yes.  
 10:12:04 15 Q Then go to Exhibit --  
 10:12:26 16 MR. HEBERLING: I think we have an  
 10:12:32 17 exhibit here that didn't get marked. Let's go off  
 10:12:32 18 the record.  
 10:12:36 19 THE VIDEOGRAPHER: We're going off  
 10:12:40 20 the record approximately 10:12.  
 10:12:42 21 (Discussion off the record.)  
 10:13:32 22 THE VIDEOGRAPHER: We're back on the  
 10:13:40 23 record. It's approximately 10:13.  
 24 BY MR. HEBERLING:  
 10:13:40 25 Q Okay. We solved that problem. Then

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10:13:44 1 attached to Exhibit 17, do you see a Montana State  
 10:13:48 2 Board of Health report of an industrial hygiene  
 10:13:56 3 study, August 8 to 9, 1956?  
 10:13:56 4 A Yes, sir.  
 10:14:00 5 Q Who was Ben Wake?  
 10:14:06 6 A He was with the Montana Board of Health.  
 10:14:12 7 Q Was he an industrial hygienist?  
 10:14:14 8 A His title was industrial hygiene engineer.  
 10:14:20 9 Q And what was your understanding of the  
 10:14:24 10 purpose of this visit by Mr. Wake?  
 10:14:30 11 A Well, it was customary for the State Board  
 10:14:36 12 of Health to have an inspection of various  
 10:14:38 13 industrial operations throughout the state  
 10:14:46 14 periodically, and it was also their custom to visit  
 10:14:50 15 the Libby operation periodically, and Mr. Wake  
 10:14:54 16 visited Libby on several occasions to make  
 10:14:56 17 inspections of the operation, and this would have  
 10:15:02 18 been a report on his inspection, and he says it's a  
 10:15:08 19 report of an industrial hygiene study at Libby in  
 10:15:08 20 August of 1956.  
 10:15:12 21 Q Okay. Then, on the first page after the  
 10:15:16 22 cover page, in the first paragraph, do you see  
 10:15:18 23 mention of, Mr. Lovick, assistant manager?  
 10:15:20 24 A Yes, sir.  
 10:15:22 25 Q And that's you?

10:17:00 1 plant"? Do you see that?  
 10:17:00 2 A Yes, sir.  
 10:17:10 3 Q What was your understanding of the word --  
 10:17:12 4 what the word "Toxic" meant?  
 10:17:18 5 A Well, it would be my understanding that it  
 10:17:26 6 would mean hazardous or unhealthy.  
 10:17:32 7 Q And "Considerable toxicity," did you  
 10:17:36 8 discuss what that meant with Mr. Wake?  
 10:17:36 9 A I don't recall.  
 10:17:44 10 Q As a result of this report, did Mr. Bleich  
 10:17:44 11 direct you to do anything?  
 10:17:46 12 A Not that I recall, no, sir.  
 10:17:50 13 Q Continuing under "Toxicity," it says,  
 10:18:00 14 "According to Drinker and Hatch, the pathologic  
 10:18:02 15 changes produced by asbestos are not like those of  
 10:18:04 16 silicosis. The asbestos fiber group about the neck  
 10:18:10 17 of the small air sacs in the lungs and stimulate the  
 10:18:16 18 formation of a diffuse fibrosis." Do you see that?  
 10:18:16 19 A Yes, sir.  
 10:18:24 20 Q After obtaining this report, did the Libby  
 10:18:28 21 management obtain a copy of Drinker and Hatch, wh  
 10:18:34 22 is cited here, a book on industrial dust?  
 10:18:34 23 A Not that I recall, no, sir.  
 10:18:38 24 Q And then continuing, it says, "There is no  
 10:18:40 25 definite migration or transportation of the dust

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10:15:22 1 A Yes, sir.  
 10:15:28 2 Q Did you accompany Mr. Wake on this  
 10:15:28 3 inspection?  
 10:15:34 4 A Well, I don't recall, but I probably did  
 10:15:38 5 not accompany him for the entire inspection. I may  
 10:15:40 6 or may not have accompanied him for part of it.  
 10:15:52 7 Q Okay. Let's refer to page three of the  
 10:16:02 8 report. Do you see where it says, "The maximum  
 10:16:06 9 allowable" -- This is three lines down from the top.  
 10:16:30 10 "The maximum allowable concentration for asbestos  
 10:16:30 11 is five million particles per cubic foot, and when  
 10:16:32 12 the concentration of asbestos in the dust samples  
 10:16:32 13 collected has been determined, further comments on  
 10:16:34 14 concentrations will be made. At this time, however,  
 10:16:34 15 and on the basis of the concentration of asbestos  
 10:16:36 16 found in the dust, which varies from the company's  
 10:16:38 17 records from 8 to 21 percent, it would appear that  
 10:16:38 18 the maximum concentration of dust in the air should  
 10:16:42 19 not be greater than 25 to 30 million particles per  
 10:16:44 20 cubic foot." Do you see that?  
 10:16:48 21 A Yes, sir.  
 10:16:50 22 Q And then do you see three lines down  
 10:16:52 23 under, "Toxicity - The asbestos dust in the dust in  
 10:16:56 24 the air is of considerable toxicity and is a factor  
 10:16:58 25 in the consideration of reducing dustiness in this

10:18:46 1 particles to the lymph nodes and no formation of  
 10:18:50 2 (fibrous) nodules. As the fibrosis increases, the  
 10:18:52 3 reduction in lung area causes a serious decrease  
 10:19:02 4 lung capacity or difficulty in breathing. Lanza,  
 10:19:04 5 Citation No. 2, suggested that enlarged hearts not  
 10:19:04 6 frequently in the cases of secondary asbestosis"  
 10:19:06 7 Do you see that?  
 10:19:06 8 A Yes, sir.  
 10:19:08 9 MR. GRAHAM: Object to the form of  
 10:19:10 10 questioning and the line of questioning on the ba  
 10:19:12 11 that the document speaks for itself.  
 10:19:14 12 Go ahead.  
 10:19:16 13 THE WITNESS: Okay.  
 10:19:16 14 BY MR. HEBERLING:  
 10:19:18 15 Q Then, to your knowledge in 1956, after  
 10:19:20 16 receiving this report, did the Libby management  
 10:19:24 17 obtain a copy of the Lanza medical article titled  
 10:19:28 18 "Effects of the Inhalation of Asbestos Dust on th  
 10:19:32 19 Lungs of Asbestos Workers"?  
 10:19:34 20 A I don't recall that they did, no, sir.  
 10:19:34 21 Q To your knowledge did the company ask  
 10:19:38 22 Mr. Wake for more information on this?  
 10:19:40 23 A Not that I recall, no, sir.  
 10:19:46 24 Q Did the company ask anyone for more  
 10:19:48 25 information on this?

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10:19:58 1 A Not that I recall, no, sir.

10:20:00 2 Q As of 1956, did you notice that workers

10:20:02 3 who had been at Zonolite for some time had -- that

10:20:04 4 there were workers who had been at Zonolite for some

10:20:06 5 time that had some difficulty in breathing?

10:20:10 6 MR. MURPHY: Read that back, please.

10:20:12 7 MR. HEBERLING: I'll restate it.

10:20:12 8 BY MR. HEBERLING:

10:20:14 9 Q As of 1956, did you notice workers at

10:20:18 10 Zonolite who had been there for, say, more than five

10:20:20 11 years who had difficulty in breathing?

10:20:28 12 A Well, I don't know that 1956 is a magic

10:20:30 13 date, but, certainly, over time and during the time

10:20:34 14 I was there and probably before 1956 we knew workers

10:20:38 15 that we had that had difficulty breathing, yes, sir.

10:20:42 16 Q Was anything done to identify who these

10:20:46 17 workers were as of 1956?

10:20:52 18 A I don't know what that means.

10:20:54 19 Q Was any listing made or any tests -- were

10:20:58 20 any tests done on workers to determine how serious

10:21:02 21 their breathing difficulties may have been?

10:21:04 22 A Well, at various times these workers were

10:21:12 23 referred to doctors to evaluate their general health

10:21:12 24 condition.

10:21:18 25 Q And, say, before 1956 did you receive any

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10:22:28 1 MR. GRAHAM: I would object. It

10:22:30 2 calls for a medical conclusion.

10:22:30 3 Go ahead.

10:22:32 4 THE WITNESS: I have no knowledge of

10:22:32 5 that, no.

10:22:34 6 BY MR. HEBERLING:

10:22:36 7 Q You didn't see any documents which related

10:22:36 8 the disease to the dust?

10:22:36 9 A No, sir.

10:22:38 10 Q To your knowledge, in 1956 did the company

10:22:38 11 consult with any doctors as to the disease

10:22:38 12 asbestosis?

10:23:02 13 A Not that I recall, no, sir.

10:23:14 14 Q Did you know what it was before 1956?

10:23:14 15 A No, sir, I don't --

10:23:16 16 Q Was this report your first knowledge of

10:23:16 17 what asbestosis was?

10:23:20 18 A To the best of my recollection, this

10:23:30 19 report is the first that we or I knew of the dangers

10:23:32 20 of asbestos in the workplace.

10:23:38 21 Q So as of 1956, the company knew there was

10:23:40 22 asbestos in the dust; correct?

10:23:42 23 A Yes, sir.

10:23:44 24 Q And the company also knew that asbestosis

10:23:48 25 is from inhaling asbestos dust; correct?

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10:21:20 1 word from doctors as to what the condition of

10:21:22 2 particular workers was?

10:21:26 3 A I really don't recall. It's possible, but

10:21:28 4 I don't recall the --

10:21:30 5 Q Do you recall any particular individuals

10:21:34 6 before 1956 who had difficulty with breathing?

10:21:36 7 A I recall particular individuals, but I

10:21:36 8 don't know whether it would have been before or

10:21:38 9 after 1956.

10:21:42 10 Q How about Mr. Joughin, is it?

10:21:42 11 A Jouckin.

10:21:46 12 Q Jouckin. Did he die in 1952?

10:21:52 13 A Probably. He died certainly about that

10:21:52 14 time.

10:21:54 15 Q Did he die of lung disease?

10:22:00 16 A He died of tuberculosis.

10:22:00 17 Q Do you know who diagnosed -- who called it

10:22:04 18 tuberculosis? Was that a local doctor?

10:22:06 19 A At the time of his death, he was a patient

10:22:16 20 at the State tubercular hospital in Warm Springs.

10:22:18 21 No.

10:22:18 22 Q Galen?

10:22:22 23 A In Galen. Yes, sir.

10:22:26 24 Q Was his disease related to the dust at

10:22:26 25 Libby in any way?

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10:23:48 1 A Yes, sir.

10:23:52 2 Q And the company also knew there were

10:24:00 3 workers at Zonolite who were inhaling asbestos dust;

10:24:02 4 correct?

10:24:02 5 A Yes, sir.

10:24:04 6 Q In 1956 were you aware that Drinker and

10:24:08 7 Hatch, 1954, which was cited in the report,

10:24:12 8 Exhibit 17, showed studies in England with 160

10:24:16 9 deaths from asbestosis?

10:24:26 10 A I don't know. Is that in this report?

10:24:30 11 Q No. I'm asking you if you were aware that

10:24:34 12 the Drinker and Hatch reference in this report

10:24:40 13 discussed studies in England which showed 160 deaths

10:24:44 14 due to asbestosis with an average age of

10:24:46 15 forty-eight.

10:24:46 16 MR. GRAHAM: I would object to the

10:24:50 17 form of question on the basis it's an attempt to

10:24:54 18 introduce hearsay evidence through this witness. If

10:24:58 19 you have the report, I'd prefer that you show it to

10:24:58 20 the witness.

10:25:02 21 Go ahead and answer it, Earl, if you can.

10:25:02 22 THE WITNESS: I don't have any

10:25:06 23 recollection that we were aware of that.

10:25:08 24 BY MR. HEBERLING:

10:25:10 25 Q Okay. I'm now showing you a copy of

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Libby 10:25:18 1 Drinker and Hatch, 1954, by the McGraw-Hill Book  
 10:25:20 2 Company.  
 10:25:22 3 MR. GRAHAM: Do you want him to  
 10:25:24 4 review the whole document so that he can testify to  
 10:25:26 5 that?  
 10:25:28 6 BY MR. HEBERLING:  
 10:25:32 7 Q Take a look at its format, and I'll ask  
 10:25:36 8 you whether you've ever seen this book before.  
 10:25:38 9 A No, sir, I've never seen this before.  
 10:25:44 10 Q Okay. So is it fair to say that you  
 10:25:48 11 didn't obtain this after 1956 either? Correct?  
 10:25:50 12 A I've never seen it before.  
 10:26:00 13 Q Okay. As of 1956 or, say, the late '50s,  
 10:26:02 14 who in Libby was responsible for collecting  
 10:26:06 15 literature on asbestos hazards?  
 10:26:08 16 MR. GRAHAM: Assumes facts.  
 10:26:10 17 MR. MURPHY: Object to the form.  
 10:26:12 18 THE WITNESS: Well, I don't know that  
 10:26:16 19 anybody had that specific responsibility, but,  
 10:26:18 20 certainly, if someone was going to be responsible,  
 10:26:22 21 it would have to be the general manager.  
 10:26:24 22 BY MR. HEBERLING:  
 10:26:28 23 Q Do you know if -- up to 1963, when Grace  
 10:26:32 24 took over, whether anyone in Libby collected  
 10:26:36 25 literature on industrial hygiene relating to

10:26:34 1 continuously off the rafters." Did you see that  
 10:26:36 2 happening?  
 10:26:38 3 A Yes, sir.  
 10:26:40 4 Q And what was your understanding of the  
 10:26:42 5 cure for this problem as of '56?  
 10:26:44 6 A Well, to remove that dust so it couldn't  
 10:26:46 7 fall off.  
 10:26:48 8 Q Okay. Then No. 2, it says, "Rubber  
 10:26:50 9 connectors between the vibrating screens and the  
 10:26:52 10 feed spouts are not tight." Now, in the dry mill  
 10:26:54 11 what would vibrating screens and feed spouts be?  
 10:26:56 12 A They would be for the purpose of sizing  
 10:26:58 13 the material that came across them.  
 10:27:00 14 Q So ore would come across them, and some  
 10:27:02 15 would fall down through the screens, and some wo  
 10:27:04 16 pass on?  
 10:27:06 17 A Yes, sir.  
 10:27:08 18 Q Okay. Then there's mention of rubber  
 10:27:10 19 connectors. What would the rubber connectors hav  
 10:27:12 20 to do with dust control?  
 10:27:14 21 A Well, the dust collection system, on the  
 10:27:16 22 upper part of the screen, there were hoods, and  
 10:27:18 23 these hoods were ventilated much like -- There wou  
 10:27:20 24 be an air stream coming across them and going int  
 10:27:22 25 removing the dust from the screen and putting it

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Libby 10:26:40 1 asbestos or medical literature relating to asbestos?  
 10:26:42 2 A No, sir, I don't know that.  
 10:27:06 3 Q Back to the 1956 report, page four. Under  
 10:27:10 4 "Conclusions and Recommendations," about five lines  
 10:27:12 5 down, do you see where it says, "The following are  
 10:27:14 6 several reasons why the dustiness in the dry mill is  
 10:27:22 7 heavy and why the exhaust mechanism as designed does  
 10:27:24 8 not function"? Do you see that?  
 10:27:26 9 A Yes, sir.  
 10:27:28 10 Q Then the first reason talks about the  
 10:27:34 11 rafters loaded with dust. Do you see that?  
 10:27:36 12 A Yes, sir.  
 10:27:38 13 Q Did you see rafters loaded with dust in  
 10:27:40 14 the late '50s?  
 10:27:42 15 A Yes, sir.  
 10:27:44 16 Q Did you understand how this contributed to  
 10:27:46 17 the dustiness in the air?  
 10:27:48 18 MR. MURPHY: Objection. Vague and  
 10:27:50 19 ambiguous.  
 10:27:52 20 THE WITNESS: Well, it would be  
 10:27:54 21 because of the dust in the air that the rafters  
 10:27:56 22 would be coated with dust. It would settle on those  
 10:27:58 23 rafters.  
 10:28:00 24 BY MR. HEBERLING:  
 10:28:02 25 Q And then it says, "Dust vibrates almost

10:29:24 1 into a cyclone where it could be settled out and no  
 10:29:26 2 go into the atmosphere.  
 10:29:28 3 Q Is that sort of like a hood on a kitchen  
 10:29:30 4 stove?  
 10:29:32 5 A Yes, sir.  
 10:29:34 6 Q Okay. And then what do the rubber  
 10:29:36 7 connectors have to do with dust control?  
 10:29:38 8 A Well, the hood -- The air coming across  
 10:29:40 9 that, going out of those screens, has to go  
 10:29:42 10 somewhere, and so the rubber connectors would  
 10:29:44 11 connect this hood, which was vibrating with the  
 10:29:46 12 screen, to the collection system.  
 10:29:48 13 Q Okay. And so would the cure for the  
 10:29:50 14 rubber connectors problem be simply to maintain  
 10:29:52 15 better and replace as necessary?  
 10:29:54 16 A Yes, sir.  
 10:29:56 17 Q Okay. Then No. 4 talks about, "Exhaust  
 10:29:58 18 from some of the vibrators is insufficient". Is the  
 10:30:00 19 exhaust a part of the ventilation system?  
 10:30:02 20 A Yes, sir.  
 10:30:04 21 Q So is it possible that a larger fan would  
 10:30:06 22 be required to run the ventilation system?  
 10:30:08 23 A Yes, sir.  
 10:30:10 24 Q Above, under "Conclusions," line three, it  
 10:30:12 25 says, The exhaust mechanism "was well designed

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10:31:00 1 originally, but under the handicap to which this  
 10:31:02 2 exhaust mechanism is subjected, it cannot and does  
 10:31:04 3 not function properly." Do you see that?  
 10:31:06 4 A What number is that, please?  
 10:31:08 5 Q I went up on the initial paragraph right  
 10:31:10 6 under "Conclusions," above No. 1.  
 10:31:14 7 A Yes, sir, I see that.  
 10:31:16 8 Q So in order to have the ventilation system  
 10:31:20 9 function better, might that require a larger fan?  
 10:31:26 10 A Well, I think in this case it refers to  
 10:31:30 11 better maintenance being paid to the system itself,  
 10:31:34 12 like tightening or replacing the rubber connectors  
 10:31:40 13 and that sort of thing, rather than the fan  
 10:31:42 14 capability.  
 10:31:44 15 Q And would increasing the fan capacity help  
 10:31:46 16 too?  
 10:31:46 17 A Yes, sir.  
 10:31:50 18 Q And nine years later, in 1965, did the  
 10:31:52 19 company install a larger fan?  
 10:31:52 20 A Yes, sir.  
 10:31:58 21 Q No. 5, it says, "Backs are off many of the  
 10:32:02 22 vibrators." Is that, again, the vibrating screens?  
 10:32:02 23 A Yes, sir.  
 10:32:06 24 Q Would the cure to that simply be to put  
 10:32:08 25 the backs back on the vibrators?

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10:32:06 1 fix the hoods?  
 10:32:06 2 A Yes, sir.  
 10:32:30 3 Q Then No. 9, it says there, "Many of the  
 10:32:32 4 dead ends in the exhaust system were left open,  
 10:32:38 5 permitting a large volume of air to be drawn in  
 10:32:40 6 through openings where no control was necessary."  
 10:32:44 7 Do you see how that would reduce the efficiency of  
 10:32:44 8 the ventilation system?  
 10:32:44 9 A Yes, sir.  
 10:32:46 10 Q What would be the cure to that?  
 10:32:48 11 A To plug up those ends.  
 10:32:54 12 Q Then No. 10 says, "In many (of the)  
 10:32:54 13 locations, it was obvious that the dust collection  
 10:32:58 14 mechanism was full of dirt or dust." Do you see  
 10:32:58 15 that?  
 10:33:00 16 A Yes, sir.  
 10:33:04 17 Q Did you see that condition in the dry mill  
 10:33:04 18 yourself?  
 10:33:06 19 A I don't recall it, no.  
 10:33:16 20 Q But, anyway, would the cure for that be  
 10:33:16 21 simply to clean out the areas where the dust  
 10:33:18 22 collection mechanism was full of dirt?  
 10:33:18 23 A Yes, sir.  
 10:33:28 24 Q And moving to page five in the report, at  
 10:33:30 25 the bottom there's a recommendation under No. 6 at

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10:32:10 1 A Yes, sir.  
 10:32:14 2 Q And No. 6 talks about holes in conveyor  
 10:32:18 3 pipes. So did you have conveyor pipes where the ore  
 10:32:20 4 would move from area to area?  
 10:32:30 5 A I think that the conveyor pipes would be  
 10:32:32 6 the pipes which were for the conveyance of air  
 10:32:34 7 rather than of material.  
 10:32:38 8 Q Okay. And then it talks about "Where  
 10:32:40 9 holes have been cut into the pipes at random  
 10:32:44 10 locations". Do you see that? It's the third line  
 10:32:46 11 of No. 6.  
 10:32:48 12 A Yes, sir. I see that.  
 10:32:52 13 Q Why would holes have been cut into the  
 10:32:52 14 pipes?  
 10:32:58 15 A Well, I don't know that this means that  
 10:33:02 16 they were literally cut in there. I think the holes  
 10:33:06 17 could have been worn in there by the friction of the  
 10:33:08 18 material which was being conveyed. I don't know  
 10:33:08 19 which it means.  
 10:33:12 20 Q And would the cure for that simply be to  
 10:33:14 21 fix the holes?  
 10:33:14 22 A Yes, sir.  
 10:33:20 23 Q Then No. 7 talks about hoods being broken.  
 10:33:20 24 A Uh-huh.  
 10:33:24 25 Q And would the cure for that simply be to

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10:33:36 1 the bottom of page five. It says "That a system of  
 10:33:40 2 vacuum cleaning or other cleaning of the rafters in  
 10:33:42 3 the entire mill be instituted." Do you see that?  
 10:33:42 4 A Yes, sir.  
 10:33:50 5 Q In the late '50s was there discussion of  
 10:33:52 6 getting a vacuum cleaning system?  
 10:33:54 7 A Yes, sir.  
 10:33:56 8 Q And was one obtained?  
 10:33:56 9 A I believe there was, yes, sir.  
 10:33:58 10 Q And wasn't that until much later, in the  
 10:33:58 11 mid-'50s, that you first obtained a portable vacuum  
 10:33:58 12 cleaner?  
 10:33:58 13 A I don't recall.  
 10:33:58 14 MR. MURPHY: Excuse me. Objection to  
 10:33:58 15 the form of the question. You said "Much later,"  
 10:33:58 16 middle '50s, and we're talking about a '56 report.  
 10:33:58 17 BY MR. HEBERLING:  
 10:33:58 18 Q Did I say middle '50s? I meant middle  
 10:33:58 19 '60s. Excuse me.  
 10:33:58 20 A I don't recall.  
 10:33:58 21 Q Do you recall any discussion among  
 10:33:58 22 management as to whether to get a vacuum cleaning  
 10:33:58 23 system as of the late '50s?  
 10:33:58 24 A Yes, I do. I remember discussions on it.  
 10:33:58 25 I don't remember the time.

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10:35:40 1 Q Do you remember the result?  
 10:35:46 2 A We got one. We got a vacuum cleaner  
 10:35:48 3 system, as a matter of fact, a couple of them, but  
 10:35:54 4 the results of their use was not what had been hoped  
 10:35:54 5 for.  
 10:36:00 6 Q Okay. What is your recollection on when a  
 10:36:02 7 vacuum system was first obtained?  
 10:36:04 8 A I don't recall.  
 10:36:10 9 Q And you mentioned that the vacuum system  
 10:36:10 10 had some difficulties?  
 10:36:12 11 A Yes, sir.  
 10:36:12 12 Q What was that?  
 10:36:16 13 A Well, one thing that was done -- And,  
 10:36:18 14 again, I don't recall the date, but they tried to  
 10:36:24 15 put a stationary vacuum system in with the  
 10:36:26 16 connections on each floor, and because of the  
 10:36:30 17 vibrations in the mill, the system could not be kept  
 10:36:34 18 intact. It would keep separating.  
 10:36:36 19 Another thing that was done on the  
 10:36:40 20 portable vacuum systems, which they tried, is --  
 10:36:44 21 There was always a problem on the disposal of the  
 10:36:50 22 dust which was collected, in handling it and  
 10:36:54 23 disposing of that. Just like any vacuum cleaner,  
 10:36:56 24 they have to be emptied periodically, and that was  
 10:37:02 25 the system that -- There was not a practical

10:37:38 1 Q There was never a solution to that?  
 10:38:02 2 A Not in -- No, sir. This mill was a  
 10:38:06 3 seven-story building, and if you have something  
 10:38:10 4 the top story, how do you get rid of that dust?  
 10:38:12 5 Q Would it be possible for someone to carry  
 10:38:14 6 it down the elevator?  
 10:38:16 7 A There was no elevator in that mill.  
 10:38:18 8 Q Was it a staircase down?  
 10:38:18 9 A Yes, sir.  
 10:38:22 10 Q So someone would have to carry the dust  
 10:38:22 11 down?  
 10:38:24 12 A Yes, sir.  
 10:38:26 13 Q And what was the problem there, lack of  
 10:38:26 14 manpower?  
 10:38:30 15 A Well, just the quantity that was  
 10:38:34 16 involved. It was, from a practical standpoint,  
 10:38:36 17 getting it down and getting it disposed of.  
 10:38:40 18 Q From a practical standpoint? You mean  
 10:38:42 19 number of men that would have been required  
 10:38:42 20 A Yes, sir.  
 10:38:46 21 Q Was that an unreasonable amount of work  
 10:38:48 22 to devote to this task?  
 10:38:50 23 MR. GRAHAM: I'd object. Calls for  
 10:38:52 24 speculation. Calls for an opinion. Calls for a  
 10:38:54 25 conclusion.

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10:37:04 1 solution for it, as I recall.  
 10:37:08 2 Q Okay. On the in-wall system, was that a  
 10:37:12 3 system where there were vacuum cleaner pipes in the  
 10:37:14 4 walls, and then the vacuum cleaner could be attached  
 10:37:18 5 to an outlet in the wall?  
 10:37:18 6 A Yes, sir.  
 10:37:24 7 Q Much like an in-built house system can be?  
 10:37:24 8 A Yes, sir.  
 10:37:26 9 Q Was that done in the early '70s?  
 10:37:28 10 A I don't recall when it was done. I think  
 10:37:30 11 it was done before that. I'm sure it was before  
 10:37:30 12 that.  
 10:37:38 13 Q And that's the one that vibrated apart; is  
 10:37:38 14 that right?  
 10:37:38 15 A Yes.  
 10:37:38 16 Q And the portable vacuum cleaner, you say  
 10:37:40 17 there was a problem emptying it?  
 10:37:40 18 A Yes, sir.  
 10:37:42 19 Q Is it because it filled up so quickly?  
 10:37:44 20 A Yes, sir.  
 10:37:46 21 Q And what was the problem? Why couldn't it  
 10:37:48 22 just be emptied over and over and over again?  
 10:37:50 23 A Like where? How do you dispose of it?  
 10:37:54 24 That was the problem. Where do you empty the dust,  
 10:37:56 25 and how do you dispose of it?

10:38:56 1 Go ahead and answer it to the extent you  
 10:38:56 2 can.  
 10:38:58 3 THE WITNESS: I can't answer. I  
 10:38:58 4 don't know.  
 10:39:00 5 BY MR. HEBERLING:  
 10:39:02 6 Q Was there a decision by management that it  
 10:39:06 7 would cost too much in worker time to carry the dust  
 10:39:06 8 down the floors -- down the stairs?  
 10:39:14 9 A Well, there was a decision, and I don't  
 10:39:16 10 know that the decision was based on the cost that  
 10:39:20 11 would take. Just from a practical standpoint, How  
 10:39:24 12 do you do it? more than what the cost would be  
 10:39:24 13 involved.  
 10:39:26 14 Q And what were the practical problems?  
 10:39:28 15 A Getting rid of the dust.  
 10:39:30 16 Q You mean where to take it after it left  
 10:39:32 17 the dry mill?  
 10:39:32 18 A Yes, sir.  
 10:39:34 19 Q Did you have dumps?  
 10:39:38 20 A Well, you could certainly build a dump.  
 10:39:40 21 Q Do you know when this decision that it  
 10:39:50 22 would be impractical to empty the portable vacuum  
 10:39:52 23 cleaner so many times was made?  
 10:39:52 24 A No, sir.  
 10:39:56 25 Q Can you say? Was that in the '60s?

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Libby 10:39:54 1 A I don't know.  
 2 Q You don't know?  
 10:39:56 3 A I don't recall.  
 10:39:58 4 Q Do you know who made the decision?  
 10:40:00 5 A Well, local management.  
 10:40:02 6 Q Were you in on the decision?  
 10:40:04 7 A Not directly, I don't believe, but I would  
 10:40:10 8 have been aware of it.  
 10:40:14 9 Q Do you know, in connection with that  
 10:40:18 10 decision, whether any industrial hygiene engineer  
 10:40:20 11 was consulted?  
 10:40:22 12 A No, sir, I don't know. I don't recall.  
 10:40:24 13 Q Then page six, Item 7, it says "That until  
 10:40:26 14 such time as the repair and maintenance of both the  
 10:40:28 15 exhaust and ore conveying systems have been  
 10:40:30 16 completed, all the men in the dry mill be provided  
 10:41:02 17 with or required to wear an adequate respirator".  
 10:41:04 18 Do you see that?  
 10:41:06 19 A Yes, sir.  
 10:41:10 20 Q Since that's a recommendation, does that  
 10:41:14 21 mean that that was not being done as of 1956?  
 10:41:16 22 A No, sir, it does not mean that.  
 10:41:22 23 Q Was it your understanding that most men in  
 10:41:24 24 the dry mill were wearing respirators most of the  
 10:41:26 25 time as of 1956?

10:42:02 1 be confidential or not?  
 10:42:04 2 A No, sir. Not that I -- Not to my  
 10:42:06 3 knowledge.  
 10:42:14 4 Q So if Mr. Bleich, plant manager, had a  
 10:43:16 5 conversation with the Board of Health  
 10:43:16 6 representatives regarding this, you were unaware of  
 10:43:16 7 it?  
 10:43:16 8 A Yes.  
 10:43:18 9 MR. GRAHAM: Objection. Calls for  
 10:43:18 10 gross speculation.  
 10:43:20 11 Go ahead and answer.  
 10:43:20 12 THE WITNESS: I'm certainly not aware  
 10:43:20 13 of it.  
 10:43:20 14 BY MR. HEBERLING:  
 10:43:22 15 Q Did Zonolite management keep the report  
 10:43:22 16 confidential?  
 10:43:26 17 A Well, I believe so, yes.  
 10:43:28 18 Q Was the report disseminated to the  
 10:43:28 19 employees?  
 10:43:30 20 A No, sir.  
 10:43:34 21 Q Did Zonolite management object to this  
 10:43:34 22 report?  
 10:43:36 23 A No.  
 10:43:38 24 Q As you recall?  
 10:43:38 25 A No, sir.

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Libby 10:41:30 1 A Yes, sir. The instructions were for the  
 10:41:32 2 men to be wearing respirators.  
 10:41:34 3 Q And did you understand as of 1956 that a  
 10:41:36 4 respirator is a temporary measure and is not a  
 10:41:38 5 substitute for dust control?  
 10:41:40 6 A Yes, sir.  
 10:42:02 7 Q Back to the first page of No. 17, the  
 10:42:04 8 first page of the report. Do you see where it says,  
 10:42:06 9 "This report is confidential and is not for  
 10:42:10 10 distribution except to the management of the  
 10:42:12 11 Zonolite Company"?  
 10:42:12 12 A Yes, sir.  
 10:42:16 13 Q Now, was this confidentiality established  
 10:42:20 14 per agreement between the company and the Board of  
 10:42:20 15 Health?  
 10:42:20 16 A No, sir.  
 10:42:26 17 Q Was it a condition the company placed on  
 10:42:26 18 having the inspection?  
 10:42:26 19 A No, sir.  
 10:42:30 20 Q How did the confidential statement get  
 10:42:30 21 there?  
 10:42:34 22 A The Board of Health placed it there. I  
 10:42:36 23 don't --  
 10:42:36 24 Q Did you have any discussions with the  
 10:42:38 25 Board of Health representatives as to whether this

10:43:04 1 Q Did Zonolite management agree that the  
 10:43:10 2 ventilation system was not functional as of '56?  
 10:43:12 3 MR. MURPHY: Object to the form of  
 10:43:14 4 the question.  
 10:43:16 5 BY MR. HEBERLING:  
 10:43:18 6 Q Perhaps I should refresh your  
 10:44:02 7 recollection. I read you a statement at page four  
 10:44:04 8 of the report, line five, where they're talking  
 10:44:10 9 about the ventilation system. It says it does not  
 10:44:14 10 function properly, and so my question is whether  
 10:44:18 11 Zonolite management was in agreement that the  
 10:44:20 12 ventilation system did not function properly.  
 10:44:22 13 MR. GRAHAM: Object to the form  
 10:44:22 14 again.  
 10:44:24 15 Go ahead and answer.  
 10:44:30 16 THE WITNESS: Well, yes. I believe  
 10:44:32 17 that they would agree that these things as outlined  
 10:44:34 18 here are accurate.  
 10:44:34 19 BY MR. HEBERLING:  
 10:44:40 20 Q In 1956 did the company disclose to the  
 10:44:42 21 employees that asbestos and the dust in the air was  
 10:44:44 22 toxic?  
 10:44:46 23 A Not that I recall, no, sir.  
 10:44:58 24 Q Would you agree that, as of 1956 in the  
 10:45:02 25 dry mill, it was not a healthy environment to work

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0-45:02 1 in?

0-45:04 2 A Yes, sir, I would agree with that.

0-45:12 3 Q As of 1956, did Zonolite do anything to

0-45:16 4 inform the employees what asbestosis was?

0-45:18 5 A Not that I recall, no, sir.

0-45:24 6 Q Now, before 1963 did Zonolite have a

0-45:24 7 safety committee?

10-45:24 8 A Yes, sir.

10-45:26 9 Q Were you a member?

10-45:26 10 A Yes, sir.

10-45:30 11 Q Can you say during what period of time you

10-45:32 12 were a member of the safety committee?

10-45:34 13 A No, sir. I don't recall.

10-45:36 14 Q Were you a member in the '50s?

10-45:36 15 A Probably, yes.

10-45:42 16 Q And were you a member up to the mid-'60s?

10-45:44 17 A Probably, yes.

10-45:50 18 Q Would you have began to be a member when

10-45:52 19 you became assistant manager in 1954?

10-45:54 20 A I don't know.

10-46:02 21 Q Were there workers who were members of the

10-46:04 22 safety committee as well?

10-46:04 23 A Yes, sir.

10-46:06 24 Q What did the safety committee do in the

10-46:06 25 '50s?

10-47:28 1 record at approximately 10:47.

10-47:38 2 (Brief recess.)

11-04:30 3 THE VIDEOGRAPHER: We're back on the

11-04:36 4 record, and it's approximately 11:04.

11-04:38 5 BY MR. HEBERLING:

11-05:02 6 Q Please refer to Exhibit 18. Does this

11-05:04 7 appear to be a document which lists mill equipment

11-05:10 8 and includes some drawings of the placement of the

11-05:10 9 equipment?

11-05:16 10 A Yes, sir, that's what it appears to be.

11-05:20 11 Q Is this a document that you saw at

11-05:24 12 Zonolite in the late '50s?

11-05:26 13 A I don't ever recall seeing this before.

11-05:30 14 It's possible I did, but I don't remember it.

11-05:34 15 Q Do you recall seeing similar drawings of

11-05:36 16 the placement of mill equipment?

11-05:42 17 A No, sir, I don't.

11-05:42 18 Q As far as a drawing of the dry mill and

11-05:46 19 its various floors and the location of equipment,

11-05:50 20 was there a more formal set of drawings than what

11-05:50 21 you see here?

11-05:56 22 A In some cases there would have been, but

11-06:02 23 the way that that mill was built and grew, something

11-06:04 24 like topsy, there would have been an incomplete set

11-06:12 25 of as-built drawings for the mill.

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10-46:10 1 A Well, they met periodically, I think

10-46:18 2 generally monthly, and they -- The members of the

10-46:22 3 safety committee would actually do an inspection

10-46:24 4 each month of the operations, and anything that they

10-46:28 5 deemed to be unsafe they would record and turn into

10-46:30 6 management for correction, if possible.

10-46:36 7 Q Did you review the 1956 State Department

10-46:40 8 of Health report with the safety committee?

10-46:42 9 A Probably not as a report.

10-46:48 10 Q Did you ever discuss with the safety

10-46:50 11 committee the matter of asbestos in the dust?

10-46:52 12 A I don't recall, no, sir.

10-47:00 13 Q Did you discuss, generally, the dust

10-47:00 14 problem?

10-47:00 15 A Yes.

10-47:04 16 Q Without discussing it as asbestos dust?

10-47:06 17 A Yes, sir.

10-47:12 18 Q And was that true through the rest of your

10-47:16 19 years on the safety committee up to the mid-'60s?

10-47:16 20 A Probably, yes.

10-47:26 21 Q Let's go to Exhibit 19.

10-47:28 22 A Before we do that, can we have another

10-47:30 23 break, please?

10-47:30 24 Q Sure.

10-47:34 25 THE VIDEOGRAPHER: Going off the

11-06:16 1 Q Do you know where the incomplete set of

11-06:18 2 as-built drawings may be now?

11-06:22 3 A I didn't say there was. I said that's all

11-06:24 4 there could have been. There would not have been

11-06:26 5 as-built drawings.

11-06:28 6 Q Have you seen any drawings of the dry

11-06:30 7 mill, say, in the last ten years?

11-06:32 8 A No, sir.

11-06:34 9 Q Do you know where any might be?

11-06:34 10 A No, sir.

11-06:40 11 Q Let's go to Exhibit 19. Does this appear

11-06:42 12 to be a tentative outline of a safety program dated

11-06:46 13 March 13, 1957?

11-06:54 14 A Yes, sir.

11-07:00 15 Q Is this a document you likely saw in 1957

11-07:02 16 in Libby?

11-07:02 17 A Yes, sir.

11-07:16 18 Q Let's go on to Exhibit 20. Does this

11-07:24 19 appear to be a letter from Mr. Gaudin, G-A-U-D-I-N,

11-07:30 20 to Mr. Kelley, executive vice-president of Zonolite,

11-07:32 21 dated June 26, 1957?

11-07:32 22 A Yes, sir.

11-07:34 23 Q Is this a document that you saw at Libby

11-07:36 24 in the 1950s?

11-07:34 25 A Yes, sir.

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11:07:38 1 Q Is it likely you saw it on or about its  
11:07:40 2 date?  
11:07:40 3 A Yes, sir.  
11:07:50 4 Q Let's go to Exhibit 21. Does this appear  
11:07:54 5 to be a letter of Ben Wake to Mr. Bleich, manager of  
11:07:58 6 Zonolite, dated January 12, 1959?  
11:07:58 7 A Yes, sir.  
11:08:00 8 Q And did you see this and the attached  
11:08:06 9 report at or about its date?  
11:08:06 10 A Probably, yes, sir.  
11:08:22 11 Q Let's go to page one of the report. Do  
11:08:28 12 you see, just above "Concentrations," two-thirds of  
11:08:32 13 the way down and then two lines up from that, "The  
11:08:34 14 wet mill was off the line or out of operation for  
11:08:38 15 that period, thereby, reducing dustiness  
11:08:40 16 considerably"? Do you see that?  
11:08:40 17 A Yes, sir.  
11:08:44 18 Q And then there's mention in that same  
11:08:52 19 paragraph just above what I read, Ore from Bin  
11:08:58 20 No. 1. Were there five bins for five sizes of ore?  
11:09:02 21 A There were five bins, but they were not  
11:09:16 22 for sizes of ore. They were for different blends or  
11:09:18 23 different types of ore. Those bins would have been  
11:09:18 24 for storing mill feed, not concentrate.  
11:09:18 25 Q Were there five sizes of concentrate or

11:10:40 1 questioning.  
11:10:42 2 Go ahead and answer it, Earl.  
11:10:44 3 THE WITNESS: Yes, sir, I see that.  
4 BY MR. HEBERLING:  
11:10:44 5 Q So was it your understanding that the  
11:10:58 6 average 27 percent asbestos in the dust in the air  
11:11:00 7 did not include the small particles which were not  
11:11:00 8 counted as asbestos?  
11:11:00 9 MR. GRAHAM: Objection. Foundation.  
11:11:02 10 Go ahead and answer, if you can.  
11:11:02 11 THE WITNESS: I don't know whether  
11:11:04 12 that would be true or not.  
11:11:04 13 BY MR. HEBERLING:  
11:11:08 14 Q Then page two, do you see a table of  
11:11:10 15 samples taken, 13 samples?  
11:11:10 16 A Yes, sir.  
11:11:14 17 Q And at the bottom it says "Maximum  
11:11:20 18 Allowable Concentration, Asbestos Dust, 5.0"?  
11:11:20 19 A Yes.  
11:11:22 20 Q And then, for example, the first three  
11:11:26 21 samples, do you see that that exceeds the standard  
11:11:26 22 of five?  
11:11:28 23 A Yes, sir.  
11:11:30 24 Q Then page three -- Pages three, four and  
11:11:50 25 five, do you see where this report goes into

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11:09:20 1 five grades?  
11:09:20 2 A Of concentrate, yes.  
11:09:24 3 Q And which was the smallest, No. 1 or  
11:09:26 4 No. 5?  
11:09:26 5 A No. 5.  
11:09:30 6 Q So would it be fair to say that No. 5,  
11:09:36 7 being the smallest, would generate the most dust  
11:09:36 8 when it was moved?  
11:09:44 9 A Probably, yes.  
11:09:52 10 Q Okay. Then, under "Concentrations," five  
11:09:56 11 lines down, there's a sentence beginning, "The  
11:09:58 12 percentage of airborne asbestos was determined to be  
11:10:04 13 in a concentration of from 12 on 31 percent with an  
11:10:10 14 average being approximately 27 percent." Do you see  
11:10:12 15 that?  
11:10:12 16 A Yes, sir.  
11:10:14 17 Q Then in the last line, it says, "Those  
11:10:18 18 particles that were so small that their rod-like  
11:10:20 19 appearance could not be observed were not counted as  
11:10:24 20 asbestos but were evaluated as (in the) overall dust  
11:10:30 21 level." Do you see that? That's the very last line  
11:10:30 22 of page one.  
11:10:32 23 MR. GRAHAM: I would object to the  
11:10:34 24 form of the questioning on the basis that the  
11:10:40 25 document speaks for itself. It's improper

11:11:54 1 considerable detail as to which screens by number  
11:11:58 2 and which machines were leaking dust?  
11:12:00 3 A Yes, sir. I see that.  
11:12:06 4 Q Did you go along on this inspection? Do  
5 you know?  
11:12:10 6 A I don't know, but probably not.  
11:12:18 7 Q And did Zonolite dispute this report?  
11:12:20 8 A No, sir.  
11:12:26 9 Q So is it fair to say that Zonolite agreed  
11:12:30 10 that there were, it appears, dozens of places that  
11:12:34 11 needed repair as of the date of this report?  
11:12:36 12 MR. MURPHY: Object to the form of  
11:12:38 13 the question.  
11:12:40 14 THE WITNESS: Zonolite didn't object  
11:12:42 15 to it, but that doesn't necessarily mean that they  
11:12:44 16 agreed with it all.  
11:12:46 17 BY MR. HEBERLING:  
11:12:52 18 Q Okay. Then page seven, in the middle of  
11:12:54 19 page, do you see where it says, "All of the  
11:12:58 20 locations enumerated were those that were apparent  
11:13:00 21 as major offenders in either production of dust or  
11:13:04 22 in the sacrifice of exhaust capacity which permitted  
11:13:06 23 dust to be generated at points that should have been  
11:13:14 24 controlled as designed. The points enumerated were  
11:13:14 25 not all of the locations where dust was produced,

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11:13:16 1 nor were they all the circumstances that permitted  
 11:13:20 2 the escape of dust." Do you see that?  
 11:13:20 3 A Yes, sir.  
 11:13:20 4 Q Okay. Then under "Toxicity," it says  
 11:13:30 5 "According to Ellman," and there's a cite to  
 11:13:36 6 Ellman, Pulmonary Asbestosis, 1933. Do you see  
 11:13:36 7 that?  
 11:13:36 8 A Yes, sir.  
 11:13:36 9 Q Does that appear to be an article in The  
 11:13:40 10 Journal of Industrial Hygiene?  
 11:13:40 11 A Yes, sir.  
 11:13:44 12 Q Do you know if you had a copy of that  
 11:13:44 13 article in Libby in 1959?  
 11:13:46 14 A No, sir, I don't know.  
 11:13:48 15 Q Do you know if one was obtained after this  
 11:13:50 16 report cited it?  
 11:14:00 17 A Not to my knowledge, no, sir.  
 11:14:00 18 Q It says, "According to Ellman, 'Inhalation  
 11:14:00 19 of asbestosis must be expected sooner or later to  
 11:14:00 20 produce pulmonary fibrosis, depending upon  
 11:14:00 21 (a) length of exposure and (b) nature and  
 11:14:00 22 concentration of the dust. Pulmonary asbestosis,  
 11:14:00 23 once established, is a progressive disease with a  
 11:14:00 24 bad prognosis. Its treatment can be only  
 11:14:00 25 symptomatic.'" Do you see that?

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11:14:20 1 A Yes, sir.  
 11:14:30 2 MR. GRAHAM: Objection. Improper  
 11:14:30 3 examination.  
 11:14:30 4 THE WITNESS: I see it, yes, sir.  
 11:14:32 5 BY MR. HEBERLING:  
 11:14:32 6 Q Was this the first time, in 1959, that you  
 11:14:34 7 learned that asbestosis was a disease with a bad  
 11:14:34 8 prognosis?  
 11:14:36 9 A I don't recall.  
 11:14:40 10 Q You don't recall whether you had some  
 11:14:44 11 understanding that maybe people could get over this  
 11:14:44 12 before '59?  
 11:14:46 13 A No, sir, I don't -- That is a correct  
 11:14:50 14 statement. I don't recall whether I knew this or  
 11:14:50 15 not.  
 11:15:00 16 Q As of the time you read this -- After you  
 11:15:04 17 read this, did you discuss this with Mr. Wake at a  
 11:15:06 18 conference?  
 11:15:06 19 A Not that I recall, no, sir.  
 11:15:12 20 Q Did you usually have a conference after  
 11:15:12 21 the inspection with Mr. Wake?  
 11:15:14 22 A Usually, yes. He had a termination  
 11:15:14 23 conference.  
 11:15:20 24 Q You just don't remember what happened in  
 11:15:22 25 1959?

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11:15:22 1 A No, sir.  
 11:15:24 2 Q Yes. We can understand that. When you  
 11:15:28 3 read this, did you understand that the asbestos dust  
 11:15:30 4 was a serious health hazard?  
 11:15:30 5 A Yes, sir. We realized that.  
 11:15:40 6 Q Did you realize that as early as '56?  
 11:15:40 7 A It was so stated in the '56 report, and,  
 11:15:44 8 yes, sir, we understood that it was a hazard.  
 11:15:52 9 Q And a serious hazard?  
 11:16:02 10 A Yes, sir.  
 11:16:02 11 Q Then do you see at page eight  
 11:16:04 12 recommendations that, again, the holes in the  
 11:16:06 13 exhaust system be repaired?  
 11:16:06 14 A Yes, sir.  
 11:16:10 15 Q And "That constant maintenance be  
 11:16:14 16 provided". In No. 2 do you see that?  
 11:16:16 17 A Yes, sir.  
 11:16:18 18 Q Is it your understanding that the State is  
 11:16:24 19 telling you in '59 that the maintenance wasn't  
 11:16:24 20 happening often enough?  
 11:16:24 21 MR. MURPHY: Objection.  
 11:16:26 22 MR. GRAHAM: I'd object.  
 11:16:28 23 MR. MURPHY: Objection to the form.  
 11:16:28 24 The report speaks for itself.  
 11:16:28 25 ////

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11:16:30 1 BY MR. HEBERLING:  
 11:16:30 2 Q What was your understanding in '59? Did  
 11:16:34 3 you understand that you were being told that a more  
 11:16:36 4 intensive maintenance had to be applied?  
 11:16:38 5 A Yes, sir. That's what this states.  
 11:16:40 6 Q And did the company do that?  
 11:16:42 7 A I believe so, yes, sir.  
 11:16:46 8 Q Put more manpower on maintenance?  
 11:16:46 9 A Yes, sir.  
 11:16:50 10 Q And then No. 3, the holes in the conveying  
 11:16:54 11 pipes, basically, that's the same as we discussed  
 11:16:56 12 before from the '56 report?  
 11:16:58 13 A Yes, sir.  
 11:17:04 14 Q And No. 4, "That all of the transfer  
 11:17:06 15 points for ore being deposited to open containers  
 11:17:10 16 adequately enclosed and provided with exhaust  
 11:17:12 17 ventilation." What was your understanding of  
 11:17:14 18 transfer points?  
 11:17:26 19 A Well, a transfer point is where -- In this  
 11:17:28 20 case it's ore is transferred from one means of  
 11:17:32 21 conveyance to another, such as falling off the e  
 11:17:38 22 of a belt or whatever it happens to be where it  
 11:17:38 23 transferred from one location to another.  
 11:17:42 24 Q Okay. So you understood that as being  
 11:17:44 25 generally all transfer points, not just the place.

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Libby 11:17:48 1 you called the transfer point where the trucks  
 11:17:52 2 dumped it into a conveyance down to the dry mill?  
 11:17:56 3 A No. That transfer point was an entity in  
 11:17:58 4 itself, and this does not refer to that at all.  
 11:18:00 5 This would be transfer points in the mill.  
 11:18:04 6 Q How about transfer points outside the mill  
 11:18:06 7 where the ore is being deposited into open storage?  
 11:18:10 8 MR. MURPHY: Objection to the form of  
 11:18:10 9 the question.  
 11:18:10 10 BY MR. HEBERLING:  
 11:18:12 11 Q Did you understand that those should be  
 11:18:14 12 ventilated as well?  
 11:18:16 13 A No, sir, and this doesn't refer to that.  
 11:18:22 14 Q You understood it as being -- this report  
 11:18:34 15 relating just to the dry mill?  
 11:18:36 16 A Yes, sir.  
 11:18:38 17 Q Then No. 5, the recommendation is repeated  
 11:18:42 18 "That until such time as repair and maintenance  
 11:18:46 19 of ... the exhaust and the ore conveying systems has  
 11:18:50 20 been completed all the men in the dry mill be  
 11:18:50 21 provided ... and ... required to be wear  
 11:18:54 22 respirators". Why is this repeated if they were  
 11:18:58 23 wearing respirators anyway?  
 11:19:00 24 MR. MURPHY: Objection. Form.  
 11:19:02 25 MR. GRAHAM: Objection. Form.

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Libby 11:19:04 1 MR. MURPHY: Object to the form of  
 11:19:06 2 the question. Foundation.  
 11:19:06 3 BY MR. HEBERLING:  
 11:19:08 4 Q Was it your understanding the men were  
 11:19:10 5 wearing respirators?  
 11:19:12 6 A Yes, sir. That was one of the  
 11:19:14 7 requirements. I don't know why it would be  
 11:19:14 8 repeated.  
 11:19:16 9 Q I believe you testified before about  
 11:19:24 10 95 percent of the time while you were at Grace was  
 11:19:24 11 in the office and five percent out at the mine and  
 11:19:24 12 the mill?  
 11:19:26 13 A Well, the bulk of my time was in the  
 11:19:30 14 office, certainly, yes. Five percent, 95 percent,  
 11:19:32 15 that breakdown is -- I can't dispute it.  
 11:19:34 16 Q Is that reasonable?  
 11:19:34 17 A I think so.  
 11:19:40 18 Q So is it possible that the men were not  
 11:19:42 19 wearing respirators when the supervisors weren't  
 11:19:44 20 around?  
 11:19:46 21 MR. MURPHY: Object to the form of  
 11:19:48 22 the question. Vague and ambiguous.  
 11:19:50 23 THE WITNESS: Certainly it's  
 11:19:50 24 possible.  
 11:19:52 25 ////

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1 BY MR. HEBERLING:  
 11:19:54 2 Q Did you hear problems like that?  
 11:19:58 3 A Yes. We knew that that was a difficult  
 11:20:02 4 rule to enforce, and the supervisors on the job did  
 11:20:04 5 their best to enforce it, but it was a problem. We  
 11:20:06 6 know that. We knew it.  
 11:20:08 7 Q And did you know that in the '50s and  
 11:20:08 8 '60s?  
 11:20:10 9 A Certainly.  
 11:20:16 10 Q To your knowledge was anybody ever  
 11:20:20 11 disciplined for not wearing a respirator?  
 11:20:26 12 A Well, I don't know what you mean by  
 11:20:28 13 "Disciplined," but certainly --  
 11:20:32 14 Q Let's say a written reprimand. Was there  
 11:20:36 15 ever any written reprimand to an employee for not  
 11:20:40 16 wearing a respirator while you were working there?  
 11:20:42 17 A Not to my recollection, no, sir. I don't  
 11:20:42 18 know of any.  
 11:20:44 19 Q And you were the keeper -- You were in  
 11:20:48 20 charge of the people who kept the records, at least  
 11:20:50 21 from '54 on all the way until '83?  
 11:20:54 22 A Well, yes. That would be office records,  
 11:20:56 23 but, you see, up at the operation, they would have  
 11:21:00 24 their own record keeping system, and I would have no  
 11:21:02 25 direct supervision over that.

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Libby 11:21:10 1 Q So a reprimand to an employee for not  
 11:21:12 2 wearing a respirator in the mill would have been  
 11:21:12 3 kept at the mill office?  
 11:21:18 4 A Probably, yes.  
 11:21:22 5 Q Would it have gone into his personnel  
 11:21:22 6 file?  
 11:21:26 7 A Not necessarily, no.  
 11:21:28 8 Q Did you keep the personnel files at the  
 11:21:30 9 office downtown where you were?  
 11:21:32 10 A Yes, sir.  
 11:21:34 11 Q So while you were at Zonolite, '54 to '83,  
 11:21:38 12 was there a policy of keeping the reprimand -- any  
 11:21:38 13 written reprimands on an employee in his personnel  
 11:21:34 14 file?  
 11:21:34 15 A No, sir, I believe not.  
 11:21:38 16 Q And as to any employee who was reprimanded  
 11:21:38 17 for not wearing a respirator at someplace outside  
 11:21:38 18 the dry mill, where would that reprimand have ended  
 11:21:38 19 up in a file?  
 11:21:38 20 A Well, it would depend on where that --  
 11:21:38 21 what department that employee was in, and each  
 11:21:38 22 department would have their own suboffice, if you  
 11:21:38 23 will.  
 11:21:38 24 Q So did the construction department have a  
 11:21:38 25 suboffice?

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11:22:36 1 A Yes, sir.  
 11:22:34 2 Q Okay. On the cover of the report, which  
 11:23:00 3 is part of Exhibit 21, we have the same statement,  
 11:23:02 4 The report is confidential. Do you see that?  
 11:23:04 5 A Yes, sir.  
 11:23:10 6 Q And, again, do you know if this was the  
 11:23:12 7 company's suggestion or whether it was the State's  
 11:23:14 8 suggestion to put this statement on the face of the  
 11:23:16 9 report?  
 11:23:18 10 A It was not the company's suggestion, no,  
 11:23:20 11 sir. It would have been the doings of the  
 11:23:24 12 Department of Health.  
 11:23:28 13 Q Was this report, in fact, kept  
 11:23:28 14 confidential by management?  
 11:23:32 15 A Generally, yes, I would say so.  
 11:23:34 16 Q Was this report disseminated to the  
 11:23:38 17 employees?  
 11:23:38 18 A No, sir.  
 11:23:44 19 Q Regarding the statement from Dr. Ellman,  
 11:23:48 20 the 1933 article which was quoted on the seriousness  
 11:23:52 21 of asbestosis, was that disclosed to the workers in  
 11:23:54 22 1959?  
 11:23:56 23 MR. MURPHY: Object to the form of  
 11:24:00 24 the question. It's based on hearsay.  
 11:24:02 25 THE WITNESS: So far as I know, we

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11:25:18 1 Q Okay. And do you know what Mr. Kujawa  
 11:25:20 2 training was?  
 11:25:24 3 A He was a graduate of the Butte School of  
 11:25:26 4 Mines. I believe his major was in geology.  
 11:25:28 5 Q To your knowledge did he have any train  
 11:25:30 6 in industrial hygiene?  
 11:25:34 7 A No specific training that I know of.  
 11:25:40 8 Q Did you have some responsibility for  
 11:25:42 9 safety as a member of the safety committee?  
 11:25:42 10 A Yes, sir.  
 11:25:42 11 Q What was that?  
 11:25:46 12 A Well, I would have been -- I would have  
 11:25:52 13 been responsible to see that proper records wer  
 11:25:58 14 kept and the safety committee met as schedule  
 11:26:00 15 the recommendations of the safety committee  
 11:26:02 16 followed and carried out.  
 11:26:06 17 Q Before 1963 did the company have a saf  
 11:26:06 18 manual?  
 11:26:08 19 A Have what?  
 11:26:10 20 Q A safety manual.  
 21 MR. MURPHY: Read that back, please.  
 22 THE VIDEOGRAPHER: Excuse me. W  
 23 going to have to go off the record to change ta  
 24 moment.  
 25 We're going off the record at

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11:24:06 1 never had a copy of that report, so it wouldn't have  
 11:24:08 2 been disseminated to them.  
 11:24:10 3 BY MR. HEBERLING:  
 11:24:12 4 Q How about the statement that was quoted to  
 11:24:14 5 them by the State in the 1959 report? Was that  
 11:24:18 6 disclosed to the employees?  
 11:24:20 7 MR. GRAHAM: Objection. Foundation.  
 11:24:22 8 Competency of this witness as regards to other  
 11:24:24 9 people disclosing it to the employees.  
 11:24:26 10 BY MR. HEBERLING:  
 11:24:26 11 Q To your knowledge.  
 11:24:30 12 A To my knowledge, no, sir. I don't know  
 11:24:30 13 that it was distributed to them.  
 11:24:34 14 Q In 1959 who was primarily responsible for  
 11:24:34 15 safety?  
 11:24:42 16 A The general manager, R.A. Bleich. It  
 11:24:44 17 would have been his responsibility.  
 11:24:48 18 Q And what was Mr. Kujawa's responsibility  
 11:24:50 19 there as chief engineer? Was safety something that  
 11:24:52 20 he had specifically had responsibility for?  
 11:24:54 21 A Probably, yes.  
 11:25:00 22 Q And was that so up until 1963, at least?  
 11:25:06 23 A Well, I don't know that he would have been  
 11:25:12 24 responsible all of that period, but certainly some  
 11:25:12 25 of that period he was.

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1 approximately 11:26.  
 11:26:16 2 (Brief recess.)  
 11:30:10 3 THE VIDEOGRAPHER: We're back on the  
 11:30:14 4 record. It's approximately 11:29.  
 5 THE REPORTER: I'll go ahead and read  
 6 the question back.  
 7 (The reporter then read back the  
 8 requested material beginning at page 95, line 17 ar  
 9 ending at page 95, line 20.)  
 11:30:28 10 THE WITNESS: I don't really recall.  
 11:30:34 11 I know that at one time the company published a  
 11:30:38 12 safety manual and had it printed, but I don't reall  
 11:30:42 13 remember when it would have been.  
 11:30:42 14 BY MR. HEBERLING:  
 11:30:44 15 Q Could that have been in the '60s?  
 11:30:46 16 A Yes, sir, it could have been.  
 11:31:00 17 Q Let's refer to Exhibit 22.  
 11:31:02 18 MR. GRAHAM: Jon, before you do that,  
 11:31:06 19 back at Exhibit 20, I was just looking at that, and  
 11:31:10 20 it says, "I have read the letter from Mr. Clemmon  
 11:31:14 21 (from) the Bureau of Mines" and so forth. Was t  
 11:31:16 22 a copy of that letter, or is this the only document  
 11:31:18 23 that you had?  
 11:31:20 24 MR. HEBERLING: This is all I have.  
 11:31:22 25 MR. GRAHAM: Okay. So you don't hav

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Libby 11:31:24 1 that other?

11:31:24 2 MR. HEBERLING: Do you?

11:31:26 3 MR. GRAHAM: I don't know, and I

11:31:28 4 don't know whether it was actually attached, but it

11:31:32 5 refers to it, and I was just curious as to whether

11:31:32 6 you had it.

11:31:36 7 Thank you. Sorry for the interruption.

11:31:36 8 BY MR. HEBERLING:

11:31:50 9 Q Would you please refer to Exhibit 22? Did

11:31:56 10 you receive this discharge summary for Glenn Taylor,

11:32:02 11 admission date, February 11, 1959 -- And the

11:32:04 12 admission summary is written by Dr. G.W. Setser.

11:32:10 13 Did you receive that in 1959?

11:32:16 14 A We received this discharge summary. I

11:32:20 15 really don't recall exactly when, whether it was

11:32:24 16 right after his discharge or not, but, yes, we did

11:32:26 17 receive it.

11:32:30 18 Q And did you receive it sometime -- Is it

11:32:32 19 likely that you received it sometime during the year

11:32:34 20 of 1959?

11:32:36 21 A Yes, it is.

11:32:40 22 Q Okay. It says here that Mr. Taylor worked

11:32:42 23 at Zonolite for eighteen years. Did you know him?

11:32:42 24 A Yes, sir.

11:32:50 25 Q As of 1959, did you observe any shortness

11:34:04 1 State Tuberculosis Sanitarium to you dated March 10,

11:34:06 2 1959?

11:34:10 3 A This letter was not to me. This letter

11:34:10 4 was from me.

11:34:14 5 Q Are you looking at Exhibit 23?

11:34:16 6 A I'm sorry. I was looking at Exhibit 24.

11:34:18 7 Excuse me.

11:34:24 8 Q Okay.

11:34:26 9 A Yes, sir. This is a letter to me from

11:34:28 10 Dr. Knight. I'm sorry.

11:34:30 11 Q Did you receive that at or about its date

11:34:32 12 in 1959?

11:34:32 13 A Yes, sir.

11:34:34 14 Q Did you discuss this case with Dr. Knight

11:34:36 15 over the phone?

11:34:42 16 A I don't recall.

11:34:50 17 Q Do you know why he was inquiring about

11:34:54 18 asbestos?

11:34:56 19 MR. MURPHY: You mean beyond what's

11:34:58 20 stated in his letter?

11:35:00 21 MR. HEBERLING: Right. Generally.

11:35:02 22 MR. MURPHY: The letter states what

11:35:04 23 he's doing.

11:35:04 24 BY MR. HEBERLING:

11:35:06 25 Q Generally, did you know why he was

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Libby 11:32:50 1 of breath in Mr. Taylor?

11:32:52 2 A Yes, sir.

11:32:56 3 Q In your estimation was it severe?

11:32:58 4 MR. GRAHAM: I would object on the

11:33:00 5 basis of foundation and speculation.

11:33:02 6 Go ahead and answer, if you can.

11:33:06 7 THE WITNESS: Well, I don't recall

11:33:08 8 exactly, but as I recall, yes, I would think it

11:33:10 9 would have to be classified as severe.

11:33:12 10 BY MR. HEBERLING:

11:33:12 11 Q What did you see?

11:33:14 12 A Just his general actions and his general

11:33:20 13 movements. It was obvious that he had breathing

11:33:20 14 difficulties.

11:33:24 15 Q Then, on the second page, right in the

11:33:26 16 middle, it says "Final Diagnosis on Discharge". Do

11:33:40 17 you see, "1. Histoplasmosis" and, "2. Asbestosis"?

11:33:40 18 A Yes, sir.

11:33:42 19 Q Do you know what became of Glenn Taylor?

11:33:42 20 A Yes, sir. He died.

11:33:44 21 Q Do you know how long after this 1959

11:33:46 22 report he died?

11:33:48 23 A No, sir, I don't know. I don't recall.

11:33:54 24 Q Let's go to Exhibit No. 23. Does this

11:33:58 25 appear to be a letter of Dr. Knight at the Montana

11:35:08 1 inquiring about asbestos?

11:35:12 2 A No, sir. I couldn't speculate on why he

11:35:14 3 was inquiring, other than what it states in this

11:35:16 4 letter.

11:35:18 5 Q So you don't have any information beyond

11:35:18 6 what's in the letter --

11:35:20 7 A No, sir.

11:35:26 8 Q -- at this time? Let's go to -- Now, I

11:35:28 9 believe attached to the first page of Exhibit 23 is

11:35:36 10 a letter under your signature, April 1, 1959. Do

11:35:36 11 you see that?

11:35:36 12 A Yes, sir.

11:35:38 13 Q Were you the author of that letter?

11:35:38 14 A Yes, sir.

11:35:44 15 Q And also attached are two handwritten

11:35:46 16 pages. Do you see those?

11:35:46 17 A Yes, sir.

11:35:50 18 Q And whose handwriting is that?

11:35:54 19 A Butch Bleich's, Mr. R.A. Bleich.

11:35:56 20 Q And he was your supervisor? He was the

11:35:56 21 plant manager?

11:35:58 22 A Yes, sir.

11:36:00 23 MR. GRAHAM: Excuse me. I'm

11:36:02 24 confused. Were you referring to 23 or 24?

11:36:06 25 THE WITNESS: 24.

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11:36:08 1 MR. HEBERLING: I have 23.  
 11:36:10 2 MR. GRAHAM: See. I think there's  
 11:36:12 3 confusion, because the letter from Lovick is, in our  
 11:36:14 4 set, marked as 24.  
 11:36:16 5 MR. HEBERLING: Okay. You probably  
 11:36:18 6 also have it attached as 23. There were two  
 11:36:22 7 different copies. Do you have it attached to 23?  
 11:36:24 8 MR. MURPHY: No.  
 11:36:24 9 MR. GRAHAM: No.  
 11:36:28 10 MR. MURPHY: 23 stands alone as  
 11:36:34 11 Knight to Lovick and is so marked one page, both  
 11:36:36 12 with your tab and with the Plaintiff's exhibit stamp  
 11:36:42 13 in the lower left corner. 24 is Lovick to Knight of  
 11:36:46 14 April 1, 1959, so marked with your tab and  
 11:36:50 15 Plaintiff's exhibit number in the lower left corner,  
 11:36:56 16 plus the two handwritten pages that you've just  
 11:36:58 17 begun to ask him about.  
 11:36:58 18 MR. GRAHAM: Plus another -  
 11:37:02 19 MR. MURPHY: Plus, in our book, two  
 11:37:06 20 more letters, so that Exhibit 24 in this book has a  
 11:37:14 21 total of five pages.  
 11:37:14 22 BY MR. HEBERLING:  
 11:37:18 23 Q And is that true with regard to your book  
 11:37:22 24 as well? Is Exhibit 24 the April 1, 1959 letter?  
 11:37:22 25 A Yes.

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11:37:24 1 Q And it has the two handwritten pages  
 11:37:24 2 attached?  
 11:37:26 3 A Yes. Yes.  
 11:37:30 4 MR. GRAHAM: And his also has, again,  
 11:37:34 5 the duplication of, then, 23 and then another copy  
 11:37:42 6 of his letter of 24. Should we just pull those two  
 11:37:42 7 off?  
 11:37:44 8 MR. MURPHY: I was going to say, you  
 11:37:46 9 may want to just pull them off or go off the record  
 11:37:48 10 to clear this up, but the last two pages could just  
 11:37:52 11 be removed because they're duplicates.  
 11:37:52 12 MR. HEBERLING: Yes. Let's do that.  
 11:37:52 13 THE VIDEOGRAPHER: Do you want to go  
 11:37:54 14 off the record?  
 11:37:56 15 MR. GRAHAM: No.  
 11:37:56 16 MR. HEBERLING: We can edit it  
 11:37:58 17 later.  
 11:38:04 18 THE WITNESS: Here are the two copies  
 11:38:06 19 which I've removed, if you'd like to -  
 11:38:10 20 MR. HEBERLING: Okay. I'm sure we're  
 11:38:12 21 making a lot of paper noises here.  
 11:38:14 22 BY MR. HEBERLING:  
 11:38:16 23 Q So Exhibit 24, does that appear to be a  
 11:38:22 24 letter dated April 1, 1959 which you wrote?  
 11:38:24 25 A Yes, sir.

11:38:56 1 Q Then Exhibit 26, does that appear to be a  
 11:40:00 2 letter of Dr. Cairns, C-A-I-R-N-S, dated July 20,  
 11:40:06 3 1959 to Mr. Bleich, manager of Zonolite?  
 11:40:12 4 A Yes, sir.  
 11:40:14 5 Q Did you receive this in Libby in 1959?  
 11:40:16 6 A Yes, sir.  
 11:40:18 7 Q Was that on or about its date that you  
 11:40:18 8 received it?  
 11:40:18 9 A Yes, sir.  
 11:40:26 10 Q Was Dr. Cairns Glenn Taylor's doctor?  
 11:40:30 11 A I don't know.  
 11:40:34 12 Q There's a study of x-rays done on  
 11:40:42 13 employees in 1959 which Dr. Cairns reports here. Do  
 11:40:44 14 you see that?  
 11:40:44 15 A Yes, sir.  
 11:40:48 16 Q Was Dr. Cairns hired by the company to do  
 11:40:48 17 this report?  
 11:40:48 18 A No, sir.  
 11:40:56 19 Q How was it that he did the report? Did he  
 11:40:56 20 volunteer to do it?  
 11:41:00 21 A He just did it, is all I can tell you. He  
 11:41:02 22 was chief of staff of the medical staff of the  
 11:41:06 23 hospital, and he was not asked to do this by the  
 11:41:12 24 company. I think he just did it on his own.  
 11:41:14 25 MR. GRAHAM: Excuse me, Counsel.

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11:41:20 1 With regard to Exhibit 26, is that a -- I don't know  
 11:41:26 2 what the source for this report was, but is that a  
 11:41:30 3 complete report to your knowledge?  
 11:41:32 4 MR. HEBERLING: That was going to be  
 11:41:34 5 one of my questions, as to whether there should be a  
 11:41:36 6 signature page or something like that, it being a  
 11:41:36 7 letter.  
 11:41:38 8 MR. GRAHAM: Or whether the second  
 11:41:40 9 page has any relation to the first page.  
 11:41:42 10 MR. HEBERLING: That I think we can  
 11:41:44 11 establish. It's the same numbers. There's 130  
 11:41:52 12 people examined and 82 normal and 48 abnormal. That  
 11:41:54 13 appears on the first and second pages.  
 11:41:56 14 MR. MURPHY: Actually, there is one  
 11:41:58 15 number different in the two. I mean, they obviously  
 11:41:58 16 appear to be based on the same information, but if  
 11:42:00 17 you look at the pneumoconiosis numbers, one is  
 11:42:02 18 eight, and one is seven.  
 11:42:04 19 MR. GRAHAM: The only point that I  
 11:42:06 20 was trying to make is that these two pages are  
 11:42:12 21 included as one -- part of the exhibit, and I don't  
 11:42:14 22 know whether they're connected, but, anyway, maybe  
 11:42:16 23 you can establish that.  
 11:42:16 24 MR. HEBERLING: That's one of my  
 11:42:20 25 questions to the witness, and I'll ask if counsel

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11:42:24 1 has a third page. I've never seen one.  
 11:42:26 2 MR. GRAHAM: I think that you're  
 11:42:28 3 making a wrongful assumption in that the first page  
 11:42:32 4 in here is marked page one and the second one is  
 11:42:34 5 page two of the same document, and I don't believe  
 11:42:42 6 that's the case, but I don't know.  
 11:42:44 7 BY MR. HEBERLING:  
 11:42:46 8 Q Okay. In the middle of the first page, it  
 11:42:48 9 says "Number of Persons Examined - 130". Was that  
 11:42:52 10 all of the workers at Zonolite in 1959?  
 11:42:52 11 A Yes, sir.  
 11:42:56 12 Q And what was the purpose of having chest  
 11:42:58 13 x-rays for all 130 workers?  
 11:43:04 14 A In 1959 the Montana legislature passed an  
 11:43:06 15 industrial disease law, which became a part of the  
 11:43:14 16 Workmen's Compensation law, and that industrial  
 11:43:16 17 disease law took into account the responsibility of  
 11:43:24 18 employers for various specified industrial diseases,  
 11:43:30 19 which would become compensable, and one of the  
 11:43:34 20 diseases which was specified in the law was  
 11:43:38 21 silicosis, which we felt was the only industrial  
 11:43:42 22 disease which would have any possibility of  
 11:43:44 23 Zonolite, our operation, being responsible for.  
 11:43:54 24 And the law specified that compensation  
 11:43:58 25 would be based upon progression of the disease after

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11:44:00 1 the passage of this act, and we x-rayed all of our  
 11:44:10 2 employees to establish a base, which could then be  
 11:44:14 3 followed, so if there was any progression of the  
 11:44:18 4 disease in our people -- And the only disease we  
 11:44:26 5 could be responsible for was for silicosis, but the  
 11:44:28 6 results of the interpretations of the x-rays showed  
 11:44:32 7 that we had -- none of our employees had silicosis,  
 11:44:36 8 but, nevertheless, we had a base established for  
 11:44:40 9 their chest -- lung conditions at that time.  
 11:44:42 10 Q Was it your understanding that under this  
 11:44:44 11 '59 law for occupational disease the company was  
 11:44:50 12 not responsible for conditions which preexisted the  
 11:44:52 13 effective date of the law?  
 11:44:54 14 A It was our understanding we were not  
 11:44:58 15 responsible for conditions which existed at that  
 11:45:02 16 time, which had been contracted previously to the  
 11:45:04 17 passage of the law.  
 11:45:06 18 Q Was this effort in part to protect the  
 11:45:08 19 company against liability for preexisting  
 11:45:08 20 conditions?  
 11:45:14 21 MR. GRAHAM: Object to the form, and  
 11:45:16 22 it requires speculation as well.  
 11:45:18 23 THE WITNESS: Well, it would  
 11:45:20 24 establish what their conditions were at that time,  
 11:45:22 25 and in that sense, yes, it would be for the

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11:45:26 1 company's protection that they couldn't be  
 11:45:28 2 responsible.  
 11:45:30 3 BY MR. HEBERLING:  
 11:45:32 4 Q Okay. In the middle of the first page, do  
 11:45:36 5 you see 48 abnormal out of a total 130?  
 11:45:38 6 A Yes, sir.  
 11:45:38 7 Q So that would be a little over a third  
 11:45:44 8 abnormal?  
 11:45:44 9 A Yes, sir.  
 11:45:46 10 Q Would the 130 include workers who had been  
 11:45:50 11 there, say, less than a year?  
 11:45:54 12 A Yes, sir. It included everyone who was on  
 11:45:56 13 the payroll at that time.  
 11:46:00 14 Q And do you see under the lettering, "a" to  
 11:46:06 15 "I", "Pleural Thickenings - 8"? Do you see that?  
 11:46:06 16 A Yes, sir.  
 11:46:10 17 Q And are you aware that that could be the  
 11:46:14 18 result of asbestos exposure?  
 11:46:14 19 A Yes, sir, it could be.  
 11:46:18 20 Q And do you see, also, "Defects of the  
 11:46:24 21 Diaphragm" -- that's "b" -- three of those?  
 11:46:24 22 A Yes, sir.  
 11:46:26 23 Q You're aware that that could be a result  
 11:46:30 24 of asbestos exposure as well?  
 11:46:32 25 MR. GRAHAM: Objection. Vague and

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11:46:32 1 ambiguous as to time.  
 11:46:34 2 THE WITNESS: This just says  
 11:46:36 3 "Defects". It could be for any reason.  
 11:46:38 4 BY MR. HEBERLING:  
 11:46:42 5 Q Okay. And do you see "c. Interstitial  
 11:46:44 6 Fibrosis"?  
 11:46:44 7 A Yes.  
 11:46:44 8 Q 26?  
 11:46:46 9 A Yes.  
 11:46:46 10 Q Are you aware that that could be the  
 11:46:50 11 result of asbestos exposure?  
 11:46:50 12 MR. GRAHAM: Same objection.  
 11:46:52 13 THE WITNESS: It could be, yes, but  
 11:47:04 14 not necessarily.  
 11:47:04 15 BY MR. HEBERLING:  
 11:47:04 16 Q What's your understanding of interstitial  
 11:47:04 17 fibrosis is?  
 11:47:06 18 A It's a scarring of the lung tissues, to my  
 11:47:06 19 understanding.  
 11:47:06 20 Q Now, to your knowledge was there an  
 11:47:06 21 additional page or two of this report with the  
 11:47:10 22 doctor's signature on it?  
 11:47:12 23 A I don't know.  
 11:47:14 24 Q When you first saw this report, were you  
 11:47:20 25 alarmed?

11:48:24 1 hospital?  
 11:48:26 2 A Yes, sir.  
 11:48:28 3 Q And as of 1959, did you feel that serious  
 11:48:34 4 health problems had been identified?  
 11:48:34 5 MR. MURPHY: Objection to the form of  
 11:48:36 6 the question. Vague and ambiguous.  
 11:48:50 7 THE WITNESS: I don't recall what we  
 11:48:54 8 would have thought about that.  
 11:48:54 9 BY MR. HEBERLING:  
 11:48:56 10 Q Have you testified in the past that when  
 11:49:00 11 you received this report you did feel that serious  
 11:49:06 12 health problems had been identified?  
 11:49:06 13 A I don't recall.  
 11:49:30 14 Q I'm now showing you your deposition dated  
 11:49:40 15 May 27, 1992, and do you see on page 52 a discuss  
 11:49:46 16 of the July 20, 1959 report from Dr. Cairns?  
 11:49:46 17 A Yes.  
 11:49:54 18 Q And then do you see the question, And did  
 11:49:56 19 these appear to be serious health problems that had  
 11:50:00 20 been identified?  
 11:50:02 21 And then did you give the answer, As a  
 11:50:02 22 layman?  
 11:50:04 23 Repeat of the question. As a layman, do  
 11:50:06 24 you feel that these were serious health problems  
 11:50:12 25 identified?

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11:47:22 1 MR. MURPHY: Objection to the form of  
 11:47:24 2 the question.  
 11:47:26 3 THE WITNESS: Well, that was forty  
 11:47:32 4 years ago almost, and I don't remember what my  
 11:47:34 5 reaction might have been.  
 11:47:34 6 BY MR. HEBERLING:  
 11:47:34 7 Q Did this appear to be an extraordinary  
 11:47:42 8 number of abnormal chests?  
 11:47:44 9 MR. MURPHY: Objection to the form of  
 11:47:44 10 the question.  
 11:47:46 11 THE WITNESS: There again, I don't  
 11:47:50 12 know what one could expect, but I would say, yes, it  
 11:47:54 13 would appear to be a large number of abnormal  
 11:47:54 14 chests.  
 11:47:56 15 BY MR. HEBERLING:  
 11:47:58 16 Q Did you make any inquiries as to how many  
 11:48:02 17 abnormal chests one could expect in a normal  
 11:48:04 18 population?  
 11:48:06 19 A Not specifically, no, sir. I don't know  
 11:48:10 20 that we did.  
 11:48:12 21 Q Did you determine which people were the 48  
 11:48:14 22 abnormal chests?  
 11:48:18 23 A We knew which ones they were because we  
 11:48:22 24 had copies of the interpretations of the x-rays.  
 11:48:34 25 Q And did you obtain those from the

11:50:12 1 Answer: Included in that abnormal list,  
 11:50:12 2 yes, there would have been some that were serious  
 11:50:14 3 health problems.  
 11:50:16 4 Do you see that?  
 11:50:18 5 A Yes, sir.  
 11:50:18 6 Q And is that the testimony you gave at the  
 11:50:24 7 time?  
 11:50:24 8 A Yes, sir.  
 11:50:28 9 Q So would you agree that Dr. Cairns  
 11:50:30 10 essentially confirmed what the company already k  
 11:50:34 11 based on the '56 report, but he brought it home to  
 11:50:36 12 particular employees?  
 11:50:36 13 MR. GRAHAM: I would object on the  
 11:50:38 14 basis that it assumes that the health employees that  
 11:50:48 15 the witness has been talking about or -- the health  
 11:50:50 16 problems are those related to asbestos.  
 11:50:50 17 Go ahead and answer the question, if you  
 11:50:50 18 can.  
 11:50:52 19 THE WITNESS: Can I hear the question  
 11:50:52 20 again, please?  
 11:50:52 21 (The reporter then read back the  
 11:50:52 22 preceding question.)  
 11:51:02 23 MR. MURPHY: And I would also object  
 11:51:06 24 on the grounds that it's vague and ambiguous.  
 11:51:10 25 THE WITNESS: I don't think that I

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11:51:14 1 could say that he did confirm that. I don't really  
 11:51:20 2 know what he confirmed, because this statistical  
 11:51:24 3 review included all abnormal chests from whatever  
 11:51:26 4 reason. For example, there's one in here that --  
 11:51:32 5 Metallic object in the chest, that certainly is not  
 11:51:34 6 something we would have been responsible for. Just  
 11:51:36 7 like some of these other things. There's no way  
 11:51:40 8 that they could have been caused by their employment  
 11:51:46 9 with us.  
 11:51:50 10 BY MR. HEBERLING:  
 11:51:52 11 Q I am now showing you again your May 27,  
 11:52:00 12 1992 deposition, and at page 242 do you see the  
 11:52:04 13 question, So, really, would you agree with me that  
 11:52:06 14 Dr. Cairns essentially confirmed what you already  
 11:52:12 15 knew based upon the 1956 report but brought it home  
 11:52:12 16 to your particular employees?  
 11:52:14 17 Answer: I think that would be a true  
 11:52:16 18 statement. Yes.  
 11:52:16 19 Do you see that?  
 11:52:16 20 A Yes.  
 11:52:18 21 Q Did you give that testimony at that time?  
 11:52:24 22 A Yes, I did.  
 11:52:26 23 MR. GRAHAM: We should note for the  
 11:52:28 24 record that the question at that time was objected  
 11:52:30 25 to, and Counsel omitted to read the objections that

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11:52:32 1 were made, and we would make the same objections  
 11:52:34 2 now.  
 11:52:36 3 BY MR. HEBERLING:  
 11:52:40 4 Q Did the company personally notify the 48  
 11:52:44 5 workers with abnormal chests?  
 11:52:48 6 A The company did not directly notify them,  
 11:52:50 7 but the employees with abnormal chests were  
 11:52:52 8 notified.  
 11:52:56 9 Q And how were they notified?  
 11:52:56 10 A By their physicians.  
 11:53:00 11 Q Are you sure that every one of them was  
 11:53:04 12 notified by his physician?  
 11:53:06 13 A No. I can't say that I'm sure of that,  
 11:53:10 14 but that was the procedure, and the physicians had  
 11:53:14 15 all agreed that they would contact the employees on  
 11:53:16 16 their conditions.  
 11:53:20 17 Q And so, as far as copies of these x-ray  
 11:53:24 18 reports went, was there one kept at the hospital,  
 11:53:28 19 one at Zonolite and one to the family doctors?  
 11:53:28 20 A Yes, sir.  
 11:53:30 21 Q Is that how it went?  
 11:53:32 22 A Yes, sir. That is the way it was handled.  
 11:53:36 23 Q And later on did you find out that there  
 11:53:42 24 were problems with this procedure of leaving it to  
 11:53:44 25 the family doctor to notify the employee?

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11:53:46 1 A Well, later on we changed the procedure so  
 11:53:54 2 that everyone with an abnormal chest was notified by  
 11:53:54 3 a company representative.  
 11:53:56 4 Q And when did you do that?  
 11:53:56 5 A I don't recall the date.  
 11:54:02 6 Q Was that late '70s, about?  
 11:54:06 7 A It would have been in the '70s, yes, sir.  
 11:54:08 8 Q And did you change the procedure because  
 11:54:12 9 of problems that some employees were not being  
 11:54:12 10 notified?  
 11:54:18 11 MR. MURPHY: Objection. Asked and  
 11:54:18 12 answered.  
 11:54:18 13 THE WITNESS: I would not say that  
 11:54:20 14 that was true. We changed the procedure so that  
 11:54:20 15 that could not happen or would not happen.  
 11:54:22 16 BY MR. HEBERLING:  
 11:54:24 17 Q Okay. I'm now showing you a memo from  
 11:54:26 18 yourself to -- And this is Exhibit 192. We'll get  
 11:54:28 19 to it. From yourself to Mr. Eschenbach dated  
 11:54:30 20 November 18, 1980. Was that a memo that you  
 11:54:30 21 authored?  
 11:54:34 22 A I don't know what it says, but I probably  
 11:54:38 23 did.  
 11:54:40 24 MR. MURPHY: Please look at before  
 11:54:42 25 you assume that you did or you didn't, if you

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11:54:44 1 haven't seen it.  
 11:54:46 2 THE WITNESS: Yes, sir, I --  
 11:54:48 3 BY MR. HEBERLING:  
 11:54:50 4 Q Do you believe you were the author of that  
 11:54:50 5 memo?  
 11:54:52 6 A Yes, sir.  
 11:54:54 7 Q I'll read you a portion from the last  
 11:54:56 8 page. It says, "In all cases the employees'  
 11:54:58 9 physician is given a copy of the radiologist's  
 11:55:00 10 review and is to review it with his patient. We  
 11:55:02 11 found this was not always being done, so beginning  
 11:55:04 12 in 1975, we began notifying employees ourselves." Do  
 11:55:06 13 you see that?  
 11:55:08 14 A Yes, sir.  
 11:55:10 15 Q And was that a correct statement of what  
 11:55:12 16 happened?  
 11:55:14 17 A I'm sure it was.  
 11:55:16 18 MR. MURPHY: Let me object if the  
 11:55:18 19 purpose of that was to suggest there was something  
 11:55:20 20 inconsistent in Mr. Lovick's prior answer with  
 11:55:22 21 respect to problems. Otherwise, it seems improper  
 11:55:24 22 Cross-Examination to simply read him something and  
 11:55:26 23 say, Is that what it says? The document speaks for  
 11:55:28 24 itself. So I object to that last question belatedly  
 11:55:30 25 on the grounds that it's improper impeachment.

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11:57:38 1 MR. HEBERLING: Okay. Counsel, the  
 11:57:42 2 purpose is not to impeach. It's to get the full and  
 11:57:44 3 complete testimony into the record and get it  
 11:57:48 4 correct. So that's why I'm doing that, but I  
 11:57:50 5 understand the objection.  
 11:57:58 6 BY MR. HEBERLING:  
 11:58:00 7 Q If the worker had an appointment to see  
 11:58:04 8 the doctor, would he have to pay for the  
 11:58:06 9 appointment?  
 11:58:06 10 A No, sir.  
 11:58:14 11 Q Was that arranged with the local  
 11:58:16 12 physicians?  
 11:58:16 13 A Yes, sir, it was.  
 11:58:18 14 Q And so they were donating their time in  
 11:58:20 15 that regard?  
 11:58:20 16 A Yes, sir.  
 11:58:26 17 Q Was the company's next set of x-rays on  
 11:58:30 18 the employees 1964?  
 11:58:30 19 A Yes, sir.  
 11:58:34 20 Q And did the company continue to do annual  
 11:58:36 21 chest x-rays all the way up to 1983 when you left?  
 11:58:38 22 A Yes, sir.  
 11:58:42 23 MR. HEBERLING: It's a little after  
 11:58:44 24 twelve. We can stop there.  
 11:58:46 25 THE VIDEOGRAPHER: We're going off

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11:58:48 1 the record. It's approximately 11:58.  
 12:57:54 2 (Lunch recess.)  
 13:04:54 3 THE VIDEOGRAPHER: We're back on the  
 13:04:58 4 record. It's approximately 1:04.  
 13:04:58 5 BY MR. HEBERLING:  
 13:05:00 6 Q Before lunch we were discussing the  
 13:05:04 7 procedure for the annual chest x-rays, and we  
 13:05:14 8 discussed whether the workers were directly notified  
 13:05:16 9 or not, and so in the '60s and the '70s, up to 1975,  
 13:05:18 10 is it correct that if a worker had an abnormal x-ray  
 13:05:22 11 the company would not directly notify the worker  
 13:05:24 12 even though the company knew it?  
 13:05:28 13 A Yes. It was the responsibility of the  
 13:05:40 14 doctor to tell the employee if there was a problem,  
 13:05:46 15 but if there was an x-ray that appeared to be quite  
 13:05:50 16 damaging to the employee, we would notify the  
 13:05:54 17 employee to be sure to see his doctor about it.  
 13:05:56 18 Q Quite damaging?  
 13:06:00 19 A Well, if it looked to be serious and he  
 13:06:10 20 might need some further follow-up or something.  
 13:06:16 21 Q When did you start doing that?  
 13:06:16 22 A I think we always did that, but the  
 13:06:18 23 procedure was for the doctor to see them, and we  
 13:06:18 24 would always post notices that the employees  
 13:06:20 25 should -- all employees should check with their

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13:06:20 1 doctors to get their results.  
 13:06:20 2 Q I'm now showing you your deposition taken  
 13:06:42 3 December 20, 1983, page 209. Do you see the  
 13:06:44 4 question, When, as I understand it, in the mid-'60s,  
 13:06:46 5 if a person had significant x-ray changes, that  
 13:06:50 6 person was not informed directly, but his regular  
 13:06:52 7 physician was informed; is that correct?  
 13:06:54 8 Answer: That's correct.  
 13:06:56 9 And if the employee did not talk to his  
 13:06:58 10 regular physician or his regular physician did not  
 13:07:02 11 inform him, no one would have discouraged him from  
 13:07:06 12 continued employment? Is that a fair statement?  
 13:07:08 13 The answer, That would be correct, yes.  
 13:07:10 14 Is that the answer you gave at the time?  
 13:07:12 15 A That's the answer I gave at the time.  
 13:07:14 16 MR. GRAHAM: Objection. Improper  
 13:07:22 17 attempt at impeachment.  
 13:07:22 18 BY MR. HEBERLING:  
 13:07:26 19 Q Now back to Exhibit 26. Is that in front  
 13:07:26 20 of you?  
 13:07:26 21 A Yes.  
 13:07:30 22 Q Do you see in the second sentence in the  
 13:07:32 23 letter it states, "It is not accurate nor complete  
 13:07:36 24 without a personal, physical differential diagnosis,  
 13:07:38 25 which should be done on all cases showing any

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13:07:46 1 abnormal defects of the chest"? Do you see that?  
 13:07:46 2 A Yes, sir.  
 13:07:50 3 Q And in 1959 did the company do anything to  
 13:07:52 4 ensure that workers with an abnormal chest had a  
 13:07:54 5 full exam?  
 13:07:58 6 A No, sir. I don't know that they would  
 13:08:00 7 have done anything directly.  
 13:08:02 8 Q To your knowledge did the company do  
 13:08:08 9 anything to notify the 82 workers with normal chest  
 13:08:10 10 that there was a pattern there indicating danger in  
 13:08:10 11 the workplace?  
 13:08:12 12 MR. MURPHY: Objection to the form of  
 13:08:16 13 the question.  
 13:08:18 14 THE WITNESS: No. I don't know that  
 13:08:20 15 we did anything directly.  
 13:08:20 16 BY MR. HEBERLING:  
 13:08:22 17 Q What about the eight workers with possible  
 13:08:30 18 asbestosis? Did the company do anything to move  
 13:08:30 19 them to work in areas of less exposure?  
 13:08:34 20 A No, sir, but it must be understood that we  
 13:08:36 21 did not have the authority to do that. We were  
 13:08:42 22 bound by union rules as to what we could do to move  
 13:08:42 23 employees around.  
 13:08:44 24 Q Did you raise the issue with the union?  
 13:08:46 25 A Yes, we did, on occasions.

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13:08:48 1 Q In '59 did you?  
 13:08:50 2 A I don't know that we did in '59, no.  
 13:08:58 3 Q Did you or anyone receive a medical study  
 13:09:02 4 of the Libby -- Excuse me. Recommend a medical  
 13:09:06 5 study of the Libby employees to find out what the  
 13:09:06 6 risks were in 1959?  
 13:09:08 7 A No, sir. Not that I recall.  
 13:09:12 8 Q Did you disclose this report of  
 13:09:18 9 Dr. Cairns, Exhibit 26, to Ben Wake of the Board of  
 10 Health?  
 13:09:18 11 A I don't recall.  
 13:09:26 12 Q Do you recall receiving any directive from  
 13:09:32 13 company headquarters in Chicago to do anything as a  
 13:09:32 14 result of this report?  
 13:09:42 15 A No, sir, I don't recall that we did.  
 13:09:44 16 Q In your mind back in '59, did this  
 13:09:46 17 underscore the need to take better care of the dust  
 13:09:48 18 problem?  
 13:09:52 19 MR. GRAHAM: Object to the form.  
 13:09:54 20 Go ahead and answer.  
 13:09:56 21 It's vague and ambiguous.  
 13:09:56 22 THE WITNESS: I don't really know  
 13:10:00 23 what the question means, but it would certainly  
 13:10:06 24 reinforce what we have always felt, that we should  
 13:10:10 25 do what we can to alleviate the dust problem that we

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13:10:10 1 had.  
 13:10:12 2 BY MR. HEBERLING:  
 13:10:18 3 Q Let's go to Exhibit 27. Does this appear  
 13:10:24 4 to be a letter by you to Mr. Foot of Detroit  
 13:10:26 5 Insurance Agency in Michigan dated September 2,  
 13:10:28 6 1959?  
 13:10:32 7 A Yes, it is. However, it's not Foot. It's  
 13:10:40 8 Toot. It's T-O-O-T.  
 13:10:42 9 Q Okay. Are you the author of this letter?  
 13:10:42 10 A Yes, sir.  
 13:10:44 11 Q It states in the second paragraph,  
 13:10:46 12 "Dr. Little ... reviewed the x-rays of all our  
 13:10:50 13 employees. He sorted out those which showed any  
 13:10:54 14 evidence or where there was ... suspicion of ...  
 13:10:56 15 condition which possibly could be classified as an  
 13:10:58 16 industrial disease." Do you see that?  
 13:10:58 17 A Yes, sir.  
 13:11:04 18 Q And then the third paragraph, "We also  
 13:11:08 19 filed with the board our election to come under the  
 13:11:12 20 Occupational Disease Act with Royal Indemnity  
 13:11:14 21 Company as our insurance carrier." Do you see that?  
 13:11:14 22 A Yes, sir.  
 13:11:16 23 MR. GRAHAM: Object. Improper  
 13:11:16 24 examination.  
 13:11:18 25 /////

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13:11:20 1 BY MR. HEBERLING:  
 13:11:20 2 Q So was this for insurance against  
 13:11:26 3 occupational disease claims?  
 13:11:28 4 A Yes, sir.  
 13:11:32 5 Q And was it your understanding that a  
 13:11:36 6 occupational disease claim would only appear if  
 13:11:40 7 there was liability if it was caused for a condition  
 13:11:44 8 at work -- caused by a condition at work?  
 13:11:50 9 A Well, that's what the Occupational Disease  
 13:11:56 10 Act was is to cover employees whose condition  
 13:11:58 11 resulted from their employment.  
 13:12:02 12 Q And what was the purpose of purchasing  
 13:12:04 13 insurance?  
 13:12:06 14 MR. GRAHAM: I would object to the  
 13:12:10 15 question on the basis that it assumes that this  
 13:12:14 16 witness knows what the purpose was.  
 13:12:16 17 Go ahead and answer it, if you can.  
 13:12:18 18 THE WITNESS: For the same reason  
 13:12:22 19 that we had industrial accident insurance, so the  
 13:12:26 20 insurance company was involved in the compensation  
 13:12:28 21 and protection of those employees.  
 13:12:28 22 BY MR. HEBERLING:  
 13:12:32 23 Q And did you purchase insurance to protect  
 13:12:32 24 the company?  
 13:12:34 25 MR. GRAHAM: Same objection.

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13:12:38 1 THE WITNESS: Well, I don't know what  
 13:12:42 2 you mean by "Protect the company". I don't know  
 13:12:46 3 what you mean. For the same reason that you have  
 13:12:52 4 insurance for anything, you're buying it, in a  
 13:12:52 5 sense, for protection.  
 13:12:56 6 BY MR. HEBERLING:  
 13:12:58 7 Q And did the company seek coverage for all  
 13:13:04 8 occupational diseases, more than just silicosis?  
 13:13:12 9 A We sought coverage under the Occupational  
 13:13:14 10 Disease Act, which would cover any occupational  
 13:13:18 11 diseases which were defined in that act.  
 13:13:22 12 Q So anything the company was held liable  
 13:13:24 13 for the insurance would cover it? Is that fair?  
 13:13:24 14 A Yes, sir.  
 13:13:30 15 Q And in doing this were you doing all you  
 13:13:32 16 could to protect the company?  
 13:13:34 17 MR. MURPHY: Objection to the form of  
 13:13:34 18 the question.  
 13:13:36 19 THE WITNESS: Well, I don't know what  
 13:13:38 20 that question means, so I can't answer it.  
 13:13:40 21 BY MR. HEBERLING:  
 13:13:44 22 Q Well, was there anything that you could  
 13:13:46 23 have done to protect the company that you didn't do?  
 13:13:50 24 A Not that I know of, no, sir.  
 13:14:00 25 Q In the last paragraph it says, "In regard

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13:14:00 1 to the list of diseases not covered by the act,  
 13:14:02 2 which we would like to consider insuring as  
 13:14:06 3 compensable, you will hear from Walter on this."  
 13:14:06 4 Who was Walter at that time?  
 13:14:10 5 A Walter Bein, who was vice-president of  
 13:14:12 6 Zonolite Company.  
 13:14:12 7 Q And was he in Chicago?  
 13:14:12 8 A Yes, sir.  
 13:14:16 9 Q Let's refer to Exhibit 28. Does this  
 13:14:20 10 appear to be a memo from you to Mr. Bein dated  
 13:14:22 11 September 2, 1959?  
 13:14:22 12 A Yes, sir.  
 13:14:24 13 Q And are you the author of this memo?  
 13:14:24 14 A Yes, sir.  
 13:14:26 15 Q Okay. In paragraph two it states, "No  
 13:14:40 16 people are hired until they have received a physical  
 13:14:44 17 examination, including (a) chest x-ray." Do you see  
 13:14:44 18 that?  
 13:14:48 19 A Yes, sir.  
 13:14:50 20 Q Was that a new policy as of '59?  
 13:14:54 21 A To the best of my recollection, that would  
 13:15:04 22 have been instituted in 1959. Yes, sir.  
 13:15:06 23 Q And why would the company not want people  
 13:15:08 24 with chest problems?  
 13:15:10 25 A Well, for the same reason that you don't

13:14:28 1 A Yes.  
 13:14:38 2 Q -- generally?  
 13:14:38 3 A Yes, sir.  
 13:14:42 4 Q Did you feel a moral obligation to notify  
 13:15:00 5 the workers that asbestos dust is toxic?  
 13:15:02 6 A Well, we certainly felt that we had a  
 13:15:08 7 moral obligation to make as safe a working  
 13:15:10 8 environment as it was possible.  
 13:15:12 9 Q Did you feel a moral obligation to notify  
 13:15:16 10 the workers that there was a serious health hazard  
 13:15:26 11 at the workplace?  
 13:15:26 12 MR. MURPHY: Objection as to the  
 13:15:26 13 form.  
 13:15:28 14 MR. HEBERLING: I'm going to object  
 13:15:28 15 to having two attorneys making objections.  
 13:15:28 16 Normally, we have one.  
 13:15:28 17 BY MR. HEBERLING:  
 13:15:32 18 Q Go ahead.  
 13:15:40 19 A Well, I would say that, yes, we would have  
 13:15:42 20 an obligation.  
 13:15:50 21 Q Then Dr. Little apparently stated that it  
 13:15:54 22 was not proved what the situation was. What was  
 13:16:00 23 your understanding as to what kind of proof might  
 13:16:02 24 required to prove the situation?  
 13:16:04 25 MR. MURPHY: Objection as to the

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13:15:12 1 want people with any other diseases which could be  
 13:15:14 2 aggravated by their employment.  
 13:15:20 3 Q So was that also to protect the company,  
 13:15:20 4 that policy?  
 13:15:22 5 A Yes.  
 13:15:44 6 Q Let's refer to Exhibit 29. Does that  
 13:15:48 7 appear to be a memo from you to Mr. Bein also dated  
 13:15:50 8 September 2, 1959?  
 13:15:52 9 A Yes, sir.  
 13:15:54 10 Q Are you the author of this one as well?  
 13:15:54 11 A Yes, sir.  
 13:15:58 12 Q In the middle paragraph you're discussing  
 13:16:02 13 a conversation with Dr. Little. Do you see that?  
 13:16:02 14 A Yes, sir.  
 13:16:04 15 Q It says, "In our conversation we discussed  
 13:16:08 16 moral obligation to employees, the practical  
 13:16:12 17 aspects, i.e., cost of such insurance, et cetera.  
 13:16:14 18 It was his feeling that at this time he would not  
 13:16:18 19 recommend our asking to be insured for asbestosis or  
 13:16:20 20 other occupational disease. He stated that,  
 13:16:24 21 actually, (we had not yet) proved that any of our  
 13:16:26 22 people are so afflicted." Do you see that?  
 13:16:26 23 A Yes, sir.  
 13:16:32 24 Q Did you feel a moral obligation to the  
 13:16:38 25 employees --

13:16:04 1 form. Vague and ambiguous.  
 13:16:08 2 THE WITNESS: I don't know. This  
 13:16:12 3 would be a judgment thing on the part of a physi  
 13:16:18 4 that they would be convinced that that is what  
 13:16:24 5 caused the particular condition.  
 13:16:26 6 BY MR. HEBERLING:  
 13:16:30 7 Q In 1959 was there any pulmonologist in  
 13:16:30 8 Libby?  
 13:16:32 9 A No, sir.  
 13:16:34 10 Q Is it your understanding that a  
 13:16:36 11 pulmonologist is a lung specialist?  
 13:16:38 12 A Yes, sir.  
 13:16:42 13 Q To your knowledge did the company consul  
 13:16:48 14 with a lung specialist in 1959 on how to proceed?  
 13:16:52 15 A Not that I recall, no, sir.  
 13:16:54 16 Q To your knowledge did the company ever d  
 13:16:54 17 so?  
 13:17:02 18 A I don't know. Not to my knowledge. I  
 13:17:02 19 really don't know.  
 13:17:06 20 Q Were you aware that Dr. Little was a  
 13:17:06 21 radiologist?  
 13:17:08 22 A Yes, sir.  
 13:17:10 23 Q And that he was not a lung specialist?  
 13:17:12 24 A Yes, sir.  
 13:17:24 25 Q Here, in the fourth paragraph down, with